No. _____

Supreme Court, U.S.
FILED

03 401 JUN 26 2003

In The

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

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Caren Tidwell
Petitioner/Involuntary Pro'se Litigant,

vs.

The Alias "The Law Offices of Clay Ragsdale"
Respondent,

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On Petition for Writ of Certiorari
To The Jefferson County Alabama Civil Court
Underlying Case # CV 96-5555
To The Jefferson County Alabama Civil Court
Case # CV 96-5555 and CV 00-7410
The Honorable Judge Joseph Boohaker, Presiding
To the Alabama Court of Civil Appeals
Case #2010679

On Appeal from the Supreme Court of Alabama
Case #1020287

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# PETITION FOR A WRIT OF CERTIORARI

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Caren Tidwell*
3300 Casey's Crossing
Birmingham, Alabama 35215
(205) 681-1621

*Involuntary Pro'se Litigant/Petitioner

4 1 PP

## QUESTIONS PRESENTED FOR REVIEW TO THE COURTS IN ALABAMA, TO THE HONORABLE AND PRESTIGIOUS UNITED STATE SUPREME COURT, AND COPIED AS REQUIRED IN THE BODY OF THIS PETITION

In accordance with Alabama's Rules of Appellate Procedure, I, the Petitioner, Caren Tidwell, presented the following questions of first impression to the Alabama Supreme Court and I now ask the Honorable United States Supreme Court to please consider the questions, conflicts, and issues presented in these questions and in the Body of my Petition:

Question # 1: "If an attorney fails to enter specific evidence supporting his client's position, resulting in the opposing counsel successfully having the critical evidence and testimony excluded from consideration of the trial court in a post trial motion, or excluded from consideration of the upper level courts on appeal, can that attorney conceal his error from his client? If breaches in agreements, neglect, deceit, and undisclosed conflicts of interest, etc., is shown, is expert witness testimony required?" (Question asked in Petition for Writ of Certiorari to the Alabama Supreme Court, pages 3-4)

Question # 2: "If an attorney promises that a specific action will be handled and he fails to handle it, does the Law require expert testimony?" (Question asked in Petition for Writ of Certiorari to the Alabama Supreme Court, page 4)

Question # 3: "If opposing counsel in the underlying case in a legal malpractice action provides an affidavit and is willing to testify for the Plaintiff/Appellant/Petitioner, is the paid testimony of an expert still mandatory?" (Question asked in Petition for Writ of Certiorari to the Alabama Supreme Court, page 4)

Question # 4: "If two employees operating the same machine at the same job and are identically injured, one employee receives his worker's comp but the other does not (because of the attorney's failures in Question 1), can this factual event be

used in substitution for the educated guess of the expert witness? Does a litigant have to hire an expert witness to make an educated guess when an identical situation occurred? Can the actual events and identical situation be substituted for an educated guess of a paid expert witness?" If not, is this considered Justice for Sale? (Question asked in Petition for Writ of Certiorari to the Alabama Supreme Court, page 4)

## LIST OF PARTIES

Alexander, Craig

Girardeau, Robert M.

Thompson, Martha Leach

The Alias "The Law Offices of Clay Ragsdale"

M Clay Ragsdale

Ansel Strickland, Jr.

The Jefferson County Alabama Civil Court
Underlying Case # CV 96-5555
The Jefferson County Alabama Civil Court
Case # CV 96-5555 and CV 00-7410
The Honorable Judge Joseph Boohaker, Presiding

The Alabama Court of Civil Appeals/Case #2010679

The Supreme Court of Alabama/Case #1020287

The Firm of Lange, Simpson, Robinson, & Somerville
Contracted by BellSouth, see Alexander above

Tidwell - The Plaintiff/Appellant/Petitioner
Caren Jane Jennings Tidwell
Involuntary Pro'se Litigant
*A Corporate Disclosure does not apply to this Petitioner.

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## REASONS FOR GRANTING THIS WRIT/PETITION

As allowed under The *United States Supreme Court Rule FRAP 10*, the Involuntary Pro'se Plaintiff/Appellant/Petitioner, Caren Tidwell, respectfully request that the Honorable United States Supreme Court grant her Petition for Writ of Certiorari. Extraordinary circumstances, the questions of first impression, our Law, New Law, New Legal opinions that are inconsistent with the citations that the Court's relied on, a violation of the rules of procedure, legal precedent established by the United States Supreme Court and ignored by the Courts in the State of Alabama, her rights to equality and due process and in the interpretation of the Law, erroneous finding of facts by the Trial Court that led to the incorrect interpretation and incorrect Law to be applied to this case, violations of her Constitutional Rights, "Bad Faith" tactics - some ignored by the Courts, a manifestly unjust adverse ruling (which will continue for the Petitioner's lifetime) which was in no way the Legislative intent of the Law, and other compelling reasons listed below support her request for this petition to be Granted, other reasons listed include but are not limited to:

1. Questions of First Impression – Pages ii-ii

I (1) The *First Amendment* states that the Petitioner has "the RIGHT...to petition the Government for a redress of grievances." Is it a violation of this Petitioner's Constitutional Rights, as stated in the *First Amendment* and the *Fourteenth Amendment* to Deny this Petitioner's request for her Petition of Certiorari by Denying with No Opinion, stating that a Petition of Certiorari is a matter of judicial discretion and not a matter of Right (*FRAP 10 and A(Alabama)RAP 39 (a)*, just as was the ruling by the Alabama Supreme Court? (Occurred only after the Alabama Supreme Court Denied this Petitioner's Petition with "No Opinion" and this is the first time that this Petitioner has been able to

raise this issue because until the Alabama Supreme Court's denial, her rights had not been violated.) Pages 2 - 3
Under this section are also the following contentions:
a) Denial of her First and Fourteenth Amendment Rights by denying this Litigant her Right to have the Government "redress her grievances". (Pages 3-4) The Petitioner in this case is an INVOLUNTARY Pro'se Litigant that has been denied her request and rights for legal guidance and counsel and has incorrectly been held to the same stringent standards as lawyers, denying her effective counsel and equal rights (Page 5). She has been denied her "day in court" on a "legal technicality" which is against the legal precedent set by this very Court itself (Page 5). In holding this Petitioner to the same stringent standards as lawyers, the State did not provide an appropriate procedural response and therefore, denying her the opportunity to prevent the deprivation, and because of these errors, denials, and not allowing her the right to legal counsel, this Petitioner's Constitutional rights have been violated. All alternatives to allow this Petitioner to have the facts presented to the "finder of fact" were rejected by the Courts, making it impossible for this Petitioner to fulfill the requirements set by the Courts to allow her to have her day in Court. (Page 9). Violations under the Fourteenth Amendment to Petitioner's Constitutional Rights and this Petitioner did not receive equal protection under the Law. (In other areas of this Petition - the Fourteenth Amendment was violated many times in different situations, but here it is on Pages 9 (Several Fourteenth Amendment Rights were Violated on Pages 2 - 29. Her case was not "construed liberally" nor was her pleadings construed so substantial justice would be done (to the Pro'se Litigant) which is a violation of all Courts rulings and the Rules of Procedure (Page 10). In addition, the Courts incorrectly assumed that the plaintiff could prove no set of facts in support of her claim which would entitle her to relief and as you can see by the above rulings, this Petitioner was not given the consistency of the interpretation of the Law, denying her equality under the Law which is in violation of the Fourteenth Amendment. All of the above mentioned actions

and/or lack of actions (whichever applies), has deprived this litigant/Petitioner of her trial and her appeal and as cited in the case above is a violation of the Rules of Civil Procedure, and a constitutional deprivation (Pages 10 - 11). The Courts in Alabama also did not take this Pro'se Litigant's allegation to be true which is in conflict with rulings of Law in numerous states Page 10. The only way that this Petitioner's case could advance to trial was by "Justice for Sale" which is clearly in violation (Page 11). The Respondent holds a powerful position over other attorneys in this area and the Petitioner is an average injured American manual labor worker and because of this the Petitioner believes that her Fourteenth Amendment rights have been violated (Page 11 - 15). An identical case in which the Petitioner's machine partner was also identically injured (and settlement for one and trial for one were both held on the same day) has also violated her rights to "equal interpretation under the Law" which by denying her her rights and giving those rights to her machine partner, has violated her Fourteenth Amendment Rights (Page 12). Also, although this Petitioner's appeal was not vague, it was never heard, the incorrect Law was applied to her case (also violating her Constitutional Rights) because in cases of deceit, such as this one, the Law states that no expert witness testimony is required and those cases are permitted to go to the jury (Here the Alabama Courts are in conflict with other Courts of Last resorts in order states and this very Court itself) (Pages 11 - 15). The trial court was in error to not accept the Affidavit of Craig Alexander and other documents by Mr. Alexander within the Record (in the Record) as that of an expert witness because he bravely came forward on the Petitioner's behalf after her attorney's deceit was discovered. He is the original Defendant's counsel in the underlying case and one of the opposing counsel against the Petitioner in other matters and he even came forward on the Petitioner's behalf - this should signal the Courts that by this rare event (probably unprecedented), a substantial injustice has been done (Page 12 - 15, 15 - 16, 28). The Trial Court incorrected concluded that the excluded evidence would have been cumulative and

not important to the underlying case. This is not the case and see Appendix Q for the list of evidence that was in the Record that was not cumulative. This was a serious misapplication in the interpretation of the evidence in the Record which prevented this Petitioner from rightfully advancing her case to trial (pages 12 – 15, also see pages 18 - 19) – See Appendix Q in Volume 2) for a listing of the Evidence in the Record that was not cumulative to the Record and the Trial Court was in error for stating that it was cumulative to the Record, Here, Summary Judgment was improperly granted – Pages 4 – 5. Also please see Volume 2, Appendix J – Statement of the Case - for the explanation of this case and the deceit involved with her own prior attorney.

II. This Petitioner is being Held to a Mandatory, Unconstitutional, Process That Results in Justice for Sale as well as other reversible issues contained in this section (Pages 15 – 29).

5. Under No Circumstances is Justice for Sale (Page 15 - 16)

As shown, a mandatory expert witness is not required by Law in this case or appeal (due to breaches in agreements, neglect, deceit, an undisclosed conflict of interest, withholding errors made by the Petitioner's own attorney – deceiving his own client and not informing the Petitioner of the errors which denied the Petitioner the true facts of what had occurred during the handling of her cases which denied her the opportunity to make an informed and intelligent decision in how to proceed with her case, etc. The Respondent argued and the trial court held that mandatory expert witness testimony was required in this case and as shown below, mandatory expert witness testimony in this case is not required by Law and is not required in any cases such as this one which shows that again the inconsistency in applying the Law to this case which also is in violation of the Fourteenth Amendment. If mandatory expert testimony were required in all cases such as this one, it would be justice for sale and unconstitutional. Therefore due to the circumstances, this Petitioner has been unconstitutionally

required to purchase, pre-trial, her day in court and her attempt to receive justice.

6. No Mandatory Expert Witness Testimony is Required in this Particular Case Due to Deceit, An Undisclosed Conflict of Interest on this Appellee/Respondent's Part, Neglect, Breach of Agreement, An Attorney Failing To Inform His Own Client of His Firm's Errors Which Resulted In Critical Evidence Not Being Considered By The Trial Court or the Upper Level Courts on Appeal, Etc. See Excerpts from Original Complaint in Appendix Complaint, and by law the Petitioner's allegations in the complaint that were to be taken as fact and do not require any expert witness testimony.

7. Cross Examination of the Appellee/Respondent's Expert Witness Pre-Trial is also Justice for Sale. The Respondent's Expert Witness Also Used the Incorrect "Level of Care" to be applied to the Respondent's Performance Pages 18 - 19. Also, the Respondent's expert witness affidavit was due to be stricken due to the incorrect "Level of Care" to the standard of care that was evaluated (Page 19). The Petitioner was impeded during discovery which caused serious prejudice in many areas of this case (Page 19). The Court ignored all of the above contested issues and denied all of the Petitioner's Motions.

8. Many Alternatives to Expert Witness Testimony Acceptable by Law were Proposed and Improperly Rejected by the Court - All Alternatives to Expert Witness Testimony proposed to the Trial and Appellate Courts are located in Appendix N. (Page 20) Other violations of the Petitioner Rights and reversible errors detailed in this Petition are located on Pages 20 - 28. Also please note that the Alabama Supreme Court announced on November 27, 2002 (after this case was on appeal but before the Alabama Supreme Court denied this Petition) a new opinion that conflicts with the trial court's opinion in this case further violating this Petitioner's Fourteenth Amendment Rights. A Motion was filed asserting this new opinion that would override the

opinion of the Trial and Alabama Civil Court of Appeals but the Supreme Court of Alabama ignored this ruling and this Motion (page 22). Also, the "old opinion" was also in conflict to rulings from other Supreme Courts (Page 22). The trial court was in error and the upper level courts were in error by not allowing this Petitioner to use an alternative to expert witness testimony or to select another expert witness (due to her tragic events in her life, which include illness, September 11th events, and death of an immediate family member). Petitioner asked for continuance before discovery was over but a continuance was cruelly and improperly denied. The Courts were also in error to deny this litigant all of the expert witness alternatives, allowed by rule and law, or to allow this Involuntary Pro'se Litigant to be able to select another expert witness (An affidavit from the original expert witness is in the Record – due to her emotional state after the tragic events in her life, she is not emotional able to render any opinion). The Courts were also in error by denying the Petitioner's motion to strike a "fake deposition in the record" submitted and used against the Petitioner in the Record (Pages 22 – 24). Many other alternatives to expert witness testimony were proposed but all rejected by the trial courts and not taken up by the Appellate Courts in Alabama, these include but are not limited to a ruling that was in conflict with the substantial evidence in the Record, the proposed and asserted *The Doctrine of Res isa loquior*, and Summary Judgment was improperly granted to this Respondent when by Law Rule 56 (ARAP) was not appropriate in this case, especially involving an Involuntary Pro'se Litigant, Violation of the Eighth Amendment and the Fourteenth Amendment of the Petitioner's Constitutional Rights have been violated, also, the rulings in this case are inconsistent to the legal precedent set by the United States Supreme Court itself, the Rulings of Law in many other states and even in conflict with the legal precedent set by denying this Involuntary Pro'se Litigant on a legal technically which prevented her from advancing her case to trial. A comparison of the cases used by the trial court and then cited in their "No Opinion" Denials do not apply to the appeal at hand and a detailed

comparison of these cases to this appeal is located in Appendix S. These cited cases were not a "simple mistake" it was acts of fraud, deceit, misrepresentation, etc. (Page 28) and have absolutely no relevance to the appeal at hand (Pages 28). Other issues are also included in the Petition and the Questions of First Impression are located in the Body of the Petition at page 29.

TABLE OF AUTHORITIES

See Full Citations and Page Numbers in Volume 2 Appendix K

*FRAP 10*

*The First Amendment in the Bill of Rights*

*Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974)*

*Daniel v Williams, 474 US 327 at 337/8, (1985)*

*Bertlesman & Phillips, Ky Practice, Vol 6 at p. 144. - Smith v Isaacs, 777 SW2d 912 at 715, (1989)*

*SEC v Vanco, 283 F2d 304 at 305, (3rd Cir 1960*

*Puckett v. Cox United States Court of Appeals (1972). Judge Crawley (from the Appellate Court in Alabama where this Petitioner's appeal was filed), Rule 8 (f), Alabama Rules of Civil Procedure." Quoted from Supreme Court of Alabama, 1970987, 1999*

*Haines v. Kerner, 404 U.S. 519 (1972) (cites omitted)*

*Conley v Gibson, 355 US 41 at 45/6, (1957); Haines v Kenner, 404 US 519, (1972) cited in Estell v Gamble, 429 US 97, (1976); also Hughes v Rowe, 449 US 5 at 10, (1980); Little v Streater, 452 US 1 at 5/6, (1981) due process; Wilwording v Swenson, 404 US 249 at 250/51, (1971); Wright v Collins, 766 F2d 841 at 846, (4th Cir 1985); Jacobson v Filler, 790 F2d 1362 at1367, (9th Cir 1986); Borzeka v Heckler, 739 F2d 444 at 447 n2, (9th Cir 1984); Garaux v Pully, 739 F2d 437 at 439, (9th Cir 1984); Parisie v Greer, 705 F2d 882 at 898, (7th Cir 1983); Moore v Fla, 703 F2d 516 at 520, (11th Cir 1983); Meritt v Faulkner, 697 F2d 761 at 769, (7th Cir 1983); Myers v US, 636 F2d 166 at 168/69, (6th Cir 1981); Gordon v Leeke, 574 F2d 1147 at 1152/53, (4th Cir 1978); Roseboro v Garrison, 528 F2d 309, (4th Cir 1975)*

*Fernandez v. United States, 941 F.2d 1488, 1491 (11th Cir.1991); see also Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 596, 30 L.Ed.2d 652 (1972)*

*United States Court of Appeals, Eleventh Circuit. No. 96-6886, SANDERS v. UNITED STATES of America, May 9, 1997*

*See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991)*

*(Memorandum Opinion at 2 n.2) (citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10,*

*The Fourteenth Amendment*

*The Fifth Amendment*

*As one of the Fourteenth Amendment's authors, Senator Jacob M. Howard of Michigan, declared;*

*Frank v Mangum, 237 US 309, (1916.*

*Griffin v Illinois, 351 US 12 at 18 (1955); Smith v Bennett, 365 US 708, (1961); Lane v Brown, 371 US 477, (1963); Long v Dist Court of Iowa, 385 US 192, (1966); Gardiner v Calif, 393 US 367, (1969); Lindsay v Normet, 405 US 56 at 77, (1971); Cochran v Kansas, 316 US 255, (1942); Frank v Mangum, 237 US 309 at 327, (1914)*

*Maxwell v Dowell, 176 US 581 at 602, (1899), cites Leeper v Texas, 139 US 462 at 467, (1891)*

*Caldwell v Texas, 137 US 692 (1891) cited in Merchant v Penn RR, 153 US 380 at 382, (1893)*

*Cochran v Kansas, 316 US 255, as cited in Dowd v Cook, U S, 340 US 206 at 208 (1950); Harper v Va Board of Elections, 383 US 663 at 673, (1966) Black J.*

*Pennoyer v Neff, 95 US 714 at 733, (1877); Davidson v N Orleans, 96 US 97, 104, 107, (1878); Hurtado v Calif, 110 US 516, (1883);*

*Missouri RR v Humes, 115 US 512 at 519, (1884/5); as cited in Dent v W VA, 129 US 114 at 122/24, (1888)*

*Regan v NY, 349 US 58 at 66, (1954)*
*Vaughn v Trotter, 516 F Supp 886 at 892, (MD Tenn 1980);*

*Olson v. Auto Owners Insurance Company, 700 SW 2d 882, 884, (MO App.E.D. 1985) (C. 389 #1)*

*ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) as amended through 1966 - ARTICLE I. DECLARATION OF RIGHTS "That the great, general, and essential principles of liberty and free government may be recognized and established, we declare:*

*Sec. 13 "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay*

*Alabama Code 1975, Statute 6-5-572 (3) (a) and (b); also see Statute 5-5 580*

*17 Mass. App. At 565-567, 460 N.E.2d at 1050.*

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*The Doctrine of Res isa loquior*

*Cox v. May Department Store Company 903 P. 2d 119 (1995)*

*Daniel v Williams, 474 US 327 at 337/8, (1985)*

*Foman v Davis, 371 US 178 at 181, (1962); NAACP v Alabama, 377 US 288, (1964); Hovel v Elliott, 167 US 409 at 413/14, (1897);*

*Bertlesman & Phillips, Ky Practice, Vol 6 at p. 144. - Smith v Isaacs, 777 SW2d 912 at 715?, (1989)*

*Conley v Gibson, 355 US 41 at 48, (1957); Schiavone v Fortune, 477 US 21 at 27, 39, (1985); Zenith Radio v Hazeltine, 401 US 321 at 335, (1970); Williard Dairy v Nat Dairy, 373 US 934 at 935, (6th Cir 1962) denied- Black J dissent; US v Hougham, 364 US 310 at 317, (1960); Foman v Davis, 371 US 178 at 181, (1962); Mayor v Ed Equality League, 415 US 605 at 634, n1, (1973) White J dissent-*

*Sup Ct New Rule Order, 346 US 945 at 946, (1954) Black CJ, as cited in Schiavone v Fortune, AKA Time Inc., 477 US 21, (1986)*

*L&N v Schmidt, 177 US 230 at 236, (1899) as cited in Simon v Craft, 182 US 427 at 436, (1900); In Re Summers, 325 US at 567, (1944) citing Nashville C&RR v Wallace, 288 US 239 at 249, (1918); Central Vermont RR v White, 238 US 507 at 511, (1914) as cited in US v Obermeier, 186 F2d 243, (1950)*

*Catron vs Jones, 135 SW2d 419, (1940); Roe v Gentry, 162 SW2d 208 at 210, (1942); Jordan v Olive Hill, 162 SW2d 229 at 231, (Ky 1942); Logan v Bradford, 178 SW2d 607, (Ky 1944); Stivers v Baker, 9 SW 491 at 492, (Ky 1888); Ashland Oil v Hudson, 275 SW2d 585, (Ky 1955); Maggard v Johnson, 229 SW2d 764, (Ky 1950); McBride v Moss, 437 SW2d 726, (1969*

*Seventh Amendment*

*See Welch v. Celotex Corp., 951 F.2d 1235, 1237 (11th Cir.1992)*

*Seventh Amendment*

*See Welch v. Celotex Corp., 951 F.2d 1235, 1237 (11th Cir.1992) Barbour v. Merrill, 48 F.3d 1270, 1277 (D.C.1995).*

*See Combs, 106 F.3d at 1537*

*As quoted in Chapman v. AI Transport, Nos. 97-8838, 97-9086 and 97-9269, United States Court of Appeals, Eleventh Circuit, July 13, 1999.*

*See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991)*

*(Memorandum Opinion at 2 n.2) (citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10, 1996)*

*RULES OF PROCEDURE 56*
*EIGHTH AMENDMENT*

*Ham v. Sith, 653 F.2d 628 (D.C.Cir.1981)*

*Olson v. Auto Owners Insurance Company, 700 SW 2d 882, 884, (MO App.E.D. 1985) (C. 389 #1)*

## THE UNITED STATES OF AMERICA
## PETITION FOR WRIT OF CERTIORARI

The Petitioner, Caren Tidwell, respectfully prays and petitions for a writ of certiorari to answer the questions of first impression and to review the rules, rulings, procedures, and judgments below. She also request that this Honorable Court review her case to see if her Constitutional Rights have been violated and to see if she has received the due process that she is entitled to, did she suffer "cruel and unusual punishment" under the Law, and if she has been treated "equally" under the Law from The Jefferson County Alabama Civil Court, The Alabama Court of Civil Appeals, and The Supreme Court of Alabama in the controversy that involves the Respondent, The Alias "The Law Offices of Clay Ragsdale."

## OPINIONS BELOW

The Opinions of the Jefferson County Alabama Civil Court, The Alabama Court of Civil Appeals, and The Supreme Court of Alabama are shown in detail in *Volume* 2 in the Appendix. Some of the Rulings are lengthy and a 2nd Volume became necessary as the Rules allow. Please keep in mind that the Ten Commandments fight at the Alabama Supreme Court has been ongoing during the time of this case/appeal and could have distracted justice from being administered in this case.

## STATEMENT OF JURISDICTION

This Petition is sought for review from Jefferson County Civil Court. A Motion of Summary Judgment was entered in favor of the Defendant/Respondent, "The Alias The Law Offices of Clay Ragsdale" *(Volume 2, Appendix A)*. The Petitioner; Caren Tidwell filed a post trial motion of reconsideration which was denied *(Volume 2, Appendix B)*. The Petitioner (Plaintiff) Tidwell filed an Appeal with the Alabama Court of Civil Appeals after all post trial motions were denied *(Volume 2, Appendix C)*. The Petitioner timely filed an Application for Rehearing *(Volume 2, Appendix D)*, however, her Application for Rehearing was denied on August 30, 2002 *(Volume 2, Appendix E)*. The Petitioner timely filed an application of rehearing but her motion was

overruled *(Volume 2, Appendix F)*. The Petitioner then filed a Petition of Cert with the Alabama Supreme Court but her Petition was Denied No Opinion even though she followed all of the Alabama Rules of Appellate Procedure Rule # 39 (k) Motion and substituted Facts for the Record as the Rules allow and the only Facts before the Alabama Supreme Court were her version of the facts since the Record was not before the Alabama Supreme Court on preliminary review. This Denial was on March 27, 2003 *(Volume 2, Appendix G)*. This Petition was timely filed and was mailed by United States Certified Mail on June 26, 2003 *(Volume 2, Appendix H)*. According to the instructions sent to me, the jurisdiction of this Court in my Petition is invoked under *28 U.S.C. § 1254 (1)* and the *First Amendment*. This case began in 1996 and due to that fact, all of the opinions had to be put in the Volume 2, Appendix I, but I have placed the ones for Jurisdictional Purposes Here.

CONSTITUTIONAL AND STATUTORY PROVISIONS

STATUTES – See *Appendix L Volume 2* for Full Text

*The Constitution of the United States/The Bill of Rights*
*The First Amendment*
*Seventh Amendment*
*Eighth Amendment*
*The Fourteenth Amendment*
*Alabama Declaration of Rights - (Article I; Section 13)*
*The Doctrine of Res isa loquior*
*AL Code 1975, SS 6-5-572 (3) (a) and (b); also Statute 5-5 580*

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STATEMENT OF THE CASE

When the portions of the record relied on under the subparagraph are voluminous, they shall be included in the appendix referred to in *subparagraph 1 (I) FRAP 14*. Since there are so many facts in this case that began in 1996, the Statement of the Case had to be put in the Appendix in order to inform this Court of the actual facts and events that has occurred in this case. See *Volume 2, Appendix J)*.

REASONS FOR GRANTING THE PETITION AND THE BODY OF THE PETITION

As allowed under *United States Supreme Court Rule FRAP 10*, the Involuntary Pro'se Plaintiff/Appellant/Petitioner,

Caren Tidwell, respectfully request that the Honorable United States Supreme Court grant her Petition for Writ of Certiorari. Extraordinary circumstances, the questions of first impression, our Law, New Law, New Legal opinions that are inconsistent with the citations that the Court's relied on, a violation of the rules of procedure, legal precedent established by the United States Supreme Court and ignored by the Courts in the State of Alabama, her rights to equality and due process and in the interpretation of the Law, erroneous finding of facts by the Trial Court that led to the incorrect interpretation and incorrect Law to be applied to this case, violations of her Constitutional Rights, "Bad Faith" tactics, some ignored by the Courts, a manifestly unjust adverse ruling (which will continue for the Petitioner's lifetime) which was in no way the Legislative intent of the Law, and other compelling reasons listed below support her request for this petition to be Granted.

1. The *First Amendment* states that the Petitioner has "the RIGHT...to petition the Government for a redress of grievances." Is it a violation of this Petitioner's Constitutional Rights, as stated in the *First Amendment* and the *Fourteenth Amendment* (nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws), to Deny this Petitioner's request for her Petition of Certiorari by Denying with No Opinion, stating that a Petition of Certiorari is a matter of judicial discretion and not a matter of Right (*FRAP 10 and A(Alabama)RAP 39 (a)*, just as was the ruling by the Alabama Supreme Court? (Occurred only after the Alabama Supreme Court Denied this Petitioner's Petition with "No Opinion" and this is the first time that this Petitioner has been able to raise this issue because until the Alabama Supreme Court's denial, her rights had not been violated.) The *First Amendment* states that the Petitioner has "the RIGHT...to petition the Government for a redress of grievances." This has long since been considered a Right. It was protected under the *English Bill of Rights of 1689*. This Petitioner, Caren Tidwell, Petitions this Honorable Court at this time to

exercise her right to have her grievances redressed and her appeal reviewed by Petitioning this Court. Tidwell argues that this is a violation of her *First and Fourteenth Amendment* Rights. To deny this Petitioner's request for her Petition for Writ of Certiorari by "Denying" with "No Opinion", (leaving an unlawful and manifestly unjust ruling never even allowing her the privilege to know why she was denied or how the Courts could just disregard the Rules and Law applicable and asserted in this case and her Rights stating that a Petition of Certiorari to State and Federal Supreme Courts is a matter of Discretion and not a matter of Right *(FRAP 10, ARAP 39 (a)*, just as was the ruling by the Alabama Supreme Court? The Petitioner claims that something wrong has been done to her, she has not had the Government Redress her grievances, nor has she had the benefit of equal rights and due process as instructed by the *Fourteenth Amendment* (some Petitioners get their grievances redress while others do not which is a violation of the *Fourteenth Amendment*), and she PRAYS that this Court will correct the injustice, just as the Legislative Branch and our Laws intends for them to do. Even though the *First Amendment* states that this Petitioner has the Right to Petition the Courts for a "redress of grievances", the rules state (*FRAP 10*) "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." If it is a matter of right, then it should not be called a "Petition" for a redress of grievances to a Government Branch (the Courts) which is protected under her *First Amendment* Rights. The Petitioner Prays that this Court fulfills her *First and Fourteenth Amendment Rights,* grants her Petition and allow her the opportunity to submit a brief on the merits so a "redress of her grievances" and the injustice that has occurred can be explored by this Court.

I. The Petitioner in this case is an INVOLUNTARY Pro'se Litigant that has been denied her request for legal guidance and counsel and has incorrectly been held to the same stringent standards as lawyers, denying her effective counsel and equal rights, which is against the legal precedent set by this very Court itself. In holding this Petitioner to the same

stringent standards as lawyers, the State did not provide an appropriate procedural response and therefore, this Petitioner's Constitutional rights have been violated.

First, it is important that this Court knows that the Petitioner in this case is an INVOLUNTARY Pro'se Litigant that has been denied her request for legal guidance and counsel and has incorrectly been held to the same stringent standards as lawyers, denying her effective counsel and equal rights, which is against the legal precedent set by this very Court itself. The Courts in any State are bound to follow the legal precedent set by the Honorable and Prestigious United States Supreme Court. This legal precedent was not followed in this case, which is another point of contention in her appeal and in this Petition. In holding this Petitioner to the same stringent standards as lawyers, the State did not provide an appropriate procedural response and therefore, this Petitioner's Constitutional rights were violated. *The United States Supreme Court has stated "The denial of a pro se litigant on technical ground is against the legal precedent from the US Supreme Court applicable to the pro se...[d]ecisions of the US Supreme Court rendered by written opinion are binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value." Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974).*

The denial of a pro se litigant on technical ground is against the legal precedent from The United States Supreme Court applicable to the pro se. This Petitioner's argument that she should not be held to the same standards as licensed, educated attorneys is much stronger than a Pro'se Litigant foolishly attempting to represent themselves. This Litigant desires to be represented and given the same advantage as someone with legal guidance and counsel. She repeatedly made her desires known to the Court but her rights were denied. This Petitioner was forced into this (Involuntary) Pro'se position and her decision to be a Pro'se Litigant was not a voluntary one; it was her only option if she was to attempt to receive justice and the wages, medical care, and benefits that she was rightfully entitled to in the first place. This Petitioner has a 12th grade education and was severely

injured in a manual labor job position. All States are guided by the United States Supreme Court's legal precedent and opinions. Here, the Courts in Alabama did not provide appropriate procedural responses and this Petitioner was not given the opportunity to prevent the deprivation. All alternatives to allow this Petitioner to have the facts presented to the "finder of fact" were rejected by the Courts, making it impossible for this Petitioner to fulfill the requirements set by the Courts to allow her to have her day in Court. She is not requesting an automatic win, she just wants the opportunity to present her facts and afford the opposing party to be allowed to answer her allegations in a court of law and have the "finder of fact", which in this case is a jury, to determine which party's set of facts is to be believed. This is a not an unreasonable request of this Petitioner, it is her right. Below is a sampling of opinions that support this Petitioner's position in requesting that this Court set aside/vacate/reverse this Respondent improperly achieving Summary Judgment and allow this Petitioner to rightfully proceed to trial so justice can be served fairly and without bias.

*"... [t]he state may violate the constitution by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation."* Daniel v Williams, 474 US 327 at 337/8, (1985). *The use of technicalities to deprive a litigant of his appeal is a violation of the Rules of Civil Procedure, and a constitutional deprivation. "[W]e no longer approach pleadings searching for a flaw, a technicality upon which to strike down a claim or defense as was formally the case at common law"* Bertlesman & Phillips, Ky Practice, Vol 6 at p. 144. - Smith v Isaacs, 777 SW2d 912 at 715, (1989). *".....[v]ague pro se appeal will be heard."* SEC v Vanco, 283 F2d 304 at 305, (3rd Cir 1960) *"Significantly, the Haines case involved a pro se complaint – as does the present case – which requires a less stringent reading than one drafted by a lawyer."* Puckett v. Cox United States Court of Appeals (1972). Judge Crawley (from the Appellate Court in Alabama where this Petitioner's appeal was filed) *stated "the Language used by a pro se litigant can not be viewed in a technical sense."* ____ So. 2d at ____. *"We cannot and should not expect a pro se litigant to use*

*the same technical precision that we expect from a lawyer."…..Further stating that "A court is to construe pleadings so as to do substantial justice, Rule 8 (f), Alabama Rules of Civil Procedure." Quoted from Supreme Court of Alabama, 1970987, 1999. "[A]llegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'." See Volume 2; Appendix K for full and numerous Citations.* This Petitioner was denied a trial due to a "technical ground" which will be fully explained in the Statement of the Case (expert witness testimony was not allowed and then the Courts held me to mandatory expert witness testimony in this case, although there are many alternative allowed by Law and expert witness testimony does not even apply in cases such as this one where deceit is involved and then her appeals were denied with no opinion *"However, a deceit count was revised and permitted to go to the jury, as it would not require expert testimony." 17 Mass. App. At 565-567, 460 N.E.2d at 1050.*. However, at this point in this Petition, the Petitioner is showing the Court that she is an involuntary Pro'se litigant, denied her rights to legal guidance and counsel, that was incorrectly held to the same standards as an experienced attorney - which is against the legal precedent set by the United States Supreme Court, her claim was not construed liberally, her appeal, although not vague, was not heard, the Courts in Alabama did not construe the pleadings so substantial justice was done, as required by the *Alabama Rules of Civil Procedure*. In addition, the Courts incorrectly assumed that the plaintiff could prove no set of facts in support of her claim which would entitle her to relief and as you can see by the above rulings, this Petitioner was not given the consistency of the interpretation of the Law, denying her equality under the Law which is in violation of the Fourteenth Amendment to the Bill of Rights which will be discussed further below. All of the above mentioned actions and/or lack of actions (whichever applies), has

deprived this litigant/Petitioner of her trial and her appeal and as cited in the case above is a violation of the Rules of Civil Procedure, and a constitutional deprivation. And as cited above from yet another case, [t]he state may have violated the constitution in this case by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation and this was not afforded to this Petitioner.

Another point of contention here is that this Involuntary Pro'se Litigant's assertions are to be taken as fact. *"Because Plaintiff is pro se, the Court will consider factual averments (declarations or assertions) in his responses as evidence to the extent that they are not contradicted by other sworn testimony of Plaintiff."* *See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991)* *"allegations presented in a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers."* *(Memorandum Opinion at 2 n.2) (citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10, 1996), "Furthermore, "a court must assume a pro se plaintiff's factual allegations are true and construe his claim liberally."* The Court's in Alabama did not take her assertions as fact because if they had, summary judgment on the basis of no expert witness testimony (even though death was involved, a continuance was requested before the end of discovery, and another expert witness was not allowed to be selected), should not appropriately be granted by Rule and Law when there was claims of fraud, the credibility of either party was in question, deceit, obvious negligence, not disclosing to the client what had occurred during the course of the handling of her cases (this Petitioner was the former client of the Respondent, who is her former attorney), an undisclosed conflict of interest, an identical case that involved her machine partner also injured and he did have "any other lawyer" and he properly received his compensation, benefits, and medical care years ago, etc. If equal interpretation and the Law had been followed, this Petitioner's factual allegations would have been considered by the Courts as true and summary judgment would not

have been improperly granted to this Respondent and I would have been granted equal protection under the Law in regards to my machine partner being identically injured and he did receive his benefits on the same day as my "disability determination" only.

II.The Courts in Alabama clearly violated this Petitioner's Constitutional Rights by violating her Fourteenth Amendment rights.

The Fourteenth Amendment, Section 1 declares: *"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

The Fourteenth Amendment REQUIRES STATE governments to respect due process of law and gives the federal government the power to enforce this requirement. The Fourteenth Amendment states *"Nor shall any State deprive any person of life, liberty, or property, without due process of law"*. Due Process requires that government must use fair procedures in fulfilling its responsibilities. This is known as Procedural due process. It requires that the procedures used by government in making, applying, interpreting, and enforcing the law be reasonable and consistent. Procedural due process limits the powers of government in order to protect individual rights and requires the Courts to use fair and reasonable procedures and to treat people equally under the law. Over the years this traditional definition of due process of law has been expanded to include substantive due process as well. This requires that the "substance" or purpose of law be constitutional.

The Fourteenth Amendment concludes by declaring that no STATE may *"deny to any person within its jurisdiction the equal protection of the laws."* By this amendment gave a new importance to the principle of equality in the Constitution. *As one of the Fourteenth Amendment's authors, Senator Jacob M. Howard of Michigan, declared; "It establishes equality before the law, and it gives, to the humblest, the poorest, the most*

*despised...the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or those most haughty...Without this principle of equal justice to all men and equal protection under the shield of the law, there can be no republican government and none that is really worth maintaining."*

The authors of the Fourteenth Amendment wanted to create a society in which all people were treated equally before the law. Equal protection of the laws meant that no individual or group was to receive special privileges or be deprived of certain rights under the law. The Fourteenth Amendment became a remedy by which the federal government can prevent state and local governments from violating individual rights.

When the Bill of Rights only limited the power of the federal government, it was of almost no importance in protecting the rights of individuals. The great change occurred when the Supreme Court applied the protections of the Bill of Rights to the states through the due process clause of the Fourteenth Amendment. Instead of limiting only the power of the federal government, the Bill of Rights now also limits the power of STATE governments in an effort to achieve the fundamental purpose of the Constitution - protecting the rights of American citizens.

As shown above in II under the heading of "Involuntary Pro'se Litigant" it is clearly shown by Rules, citings, and Law that this Petitioner did not receive equal protection under the Law and that inconsistent interpretation was incorrectly applied. The Petitioner has shown the Court that she is an involuntary Pro'se litigant, denied her rights to legal guidance and counsel, that was incorrectly held to the same standards as an experienced attorney - which is against the legal precedent set by the United States Supreme Court, her claim was not construed liberally, her appeal, although not vague, was not heard, the Courts in Alabama did not construe the pleadings so substantial justice was done, as required by the *Alabama Rules of Civil Procedure*. The Petitioner also showed that the Courts incorrectly assumed that the plaintiff could prove no set of facts in support of her claim which would entitle her to relief and as you can see by

the above rulings, this Petitioner was not given the consistency of the interpretation of the Law, denying her equality under the Law which is in violation of the Fourteenth Amendment to the Bill of Rights. The Courts also did not consider her factual allegations as true as in which they were suppose to do considering she was an involuntary Pro'se litigant, ignorant of proper procedure and struggling to attempt to follow each and every one of the complicated rules. All of the above mentioned actions and/or lack of actions (whichever applies), has deprived this litigant/Petitioner of her day in court and her appeal and as cited in the cases above is a violation of the Rules of Civil Procedure, and a constitutional deprivation, in which the State did not provide an appropriate procedural response, as well as a Violation of her Fourteenth Amendment's Rights.

As clearly shown above, the Courts in Alabama did not apply and/or interpret the law consistently and therefore this Petitioner's Fourteenth Amendment's Rights were violated. The Fourteenth Amendment also requires the State to provide reasonable procedures to give both parties an equal chance to advance their case to trial. In the case at hand, it was made impossible for this Petitioner to advance her case to trial as will be further discussed in IV below. As discussed in IV below, this also violated her Fourteenth Amendment's Rights by requiring that this Petitioner "purchase justice pre-trial" and all reasonable alternatives to "Justice for Sale" was rejected by the Courts although they were allowed by Law.

The Petitioner also feels that her Fourteenth Amendment Rights have been violated and she is not receiving equal protection under the Law. This case/appeal/Petition involves an attorney's firm (which this Petitioner discovered after the Respondent was granted Summary Judgment) that the head of this Respondent's firm holds a powerful position on the Executive Committee of the Birmingham Bar Association. The Petitioner is just an average citizen that was severely injured in a manual labor position (hospitalized over 18 times with these injuries) who hired this Respondent's firm to assist her in receiving the worker's compensation

benefits that she was rightfully entitled to. Her machine partner was also identically injured and he did receive his worker's compensation, benefits, and medical care years ago and he used "any other lawyer" so that burden was automatically satisfied. A worker's comp trial was held and this Respondent's younger associate that worked for this firm (he no longer works for this firm and he also no longer practices Law) failed to submit critical evidence before the Judge made his ruling. After the adverse ruling, this Respondent scrambled to attempt to have the evidence entered into the Record. Evidence excluded included but was not limited to the supervisor's testimony that immediate notice of injury was given and he witnessed her injuries immediately after this was reported, numerous physicians statements that her injuries were job related, a two page evaluation from the physician assigned to do a disability determination in which she stated that this Petitioner's injuries were solely job related, not caused from any pre-existing condition, nor was it caused from any other accident, statements from another company physician stating that the Petitioner's injuries were a result of the October 30, 1995 accident at work, not from any pre-existing condition, nor was it from any other accident, the numerous testimonies of the Petitioner's co-workers supporting her position, etc. The original opposing counsel, Mr. Craig Alexander, defending the Petitioner's employer, successfully argued at the Motion of Reconsideration that although the critical evidence that was not entered prior to the Judge's ruling was of such quality that it could have an effect on the outcome of the trial, that it could not be considered because this Petitioner's attorney had this evidence at the time of trial and that he had failed to timely submit the critical evidence prior to the Judge making his ruling. This caused all of the critical evidence never to be considered by the trial Court or the upper level courts on appeal. The Petitioner was led to believe that the adverse ruling had been caused by the original defendant's counsel breaching an agreed upon pre-trial stipulation and the Petitioner's attorney's (who is the Respondent in this Petition) failure to timely submit the critical evidence was not

disclosed to the Petitioner. After all appeals were exhausted on the worker's comp case (all were denied - no opinion) this Petitioner had a civil but firm confrontation with the original defendant's attorney (the one that was unjustly blamed for the adverse ruling). It was then that this Petitioner discovered that it was her own attorney that had deceived her and had not disclosed to her that it was their firm that had failed to timely submit the critical evidence into the Record before the original trial judge made his ruling and that the original defendant's attorney successfully argued that due to their error that the critical evidence could not be considered by the trial or appellate courts, even though the evidence was of such quality that it could have an effect on the outcome of the trial. This Petitioner was drug through the process of ineffective appeals (based on her attorney's undisclosed conflict of interest) and what had occurred during the handling of her cases was not disclosed to her. This prevented her from making an intelligent and informed decision on how to proceed with her cases. No knowing the truth and after all appeals were exhausted, this Petitioner confronted the original defendant's attorney to ask him how he could look at himself in the mirror by breaching pre-trial stipulations which caused an adverse ruling. How could he intentionally cheat a severely injured worker out of her justly deserved benefits? It was then that the original defendant's attorney turned over documentation proving that it was the Petitioner's attorney's error (and the Respondent in this case) and not a breach in a pre-trial stipulation that had caused the adverse ruling. So in this Petition, we have an attorney in a powerful position over other attorneys (which this Petitioner feels is one of the factors which has prevented her from obtaining adequate counsel at a reasonable price) and a severely injured manual labor worker who holds no power or influence in the community. After the unreasonable rulings and other events that have occurred throughout this Petitioner's experience within the "justice" system, it is only natural for her to wonder if her Fourteenth Amendment Rights that states "*nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any*

*person within its jurisdiction the equal protection of the laws."* considering she is a "nobody" in the community that is up against an attorney that is in a powerful position over other attorneys in the area. Situations like these are the basis for our Fourteenth Amendment and just like the police have the "big blue wall" other professions such as this one also protect their own. The Law and the Fourteenth Amendment demands that all Litigants be given an opportunity to be heard even if one party is "of powerful influence" and the other is an average citizen. The powerful position held by one party should not interfere with justice being fairly served. In addition to the Fourteenth Amendment being applied as intended, below is other citings that support this Petitioner's position: *".....[d]ue process of law guaranteed by the 14th Amendment has regard to substance of right and not to matters of form and procedure. . . the entire course of proceedings, and not merely one step, must be considered. . .* Frank v Mangum, 237 US 309, (1916. *Appeal is a right, due to all litigants equally, under whatever rules the state sees fit to impose. What is fair procedure for one is to be equally applied to all. "[w]hen appeal is afforded. . . . it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the equal protection clause."* Griffin v Illinois, 351 US 12 at 18 (1955); See Vol 2, App. K for other laws supporting this citation; *"appeal is an element of Due Process and protected by the 14th Amendment.* Maxwell v Dowell, 176 US 581 at 602, (1899), cites Leeper v Texas, 139 US 462 at 467, (1891); *"[n]o state can deprive particular person or classes of persons of equal and impartial justice under the law without violating the provisions of the 14th amendment of the constitution. . . due process of law within the meaning of the constitution is secured where the law operate on all alike and no one is subject to partial or arbitrary exercise of the powers of the government. . . "* Caldwell v Texas, 137 US 692 (1891) cited in Merchant v Penn RR, 153 US 380 at 382, (1893); *The denial of an appeal which is brought under the Rules of Civil Procedure is a constitutional deprivation and a denial of access to the court when it is denied in an unreasonable and arbitrary manner. ". . . [i]n this court the state admits, as it must, that a discriminatory denial of the statutory right of appeal is a violation of the equal protection clause of the 14th Amendment . . . . ."*

*Cochran v Kansas, 316 US 255, as cited in Dowd v Cook, U S, 340 US 206 at 208 (1950); Other citations to this ruling in Vol. 2 Appendix K- Pennoyer v Neff, 95 US 714 at 733, (1877); Davidson v N Orleans, 96 US 97, 104, 107, (1878); Hurtado v Calif, 110 US 516, (1883); Missouri RR v Humes, 115 US 512 at 519, (1884/5); as cited in Dent v W VA, 129 US 114 at 122/24, (1888); ".....[a]ny . . . state statute - must be applied uniformly . . . . . ; otherwise the Equal Protection clause of the 14th Amendment is violated." Regan v NY, 349 US 58 at 66, (1954) "[a]lthough not specifically mentioned in the constitution, the right of court access is based upon the 1st and 14th Amendment" Vaughn v Trotter, 516 F Supp 886 at 892, (MD Tenn 1980); "At the base of this skepticism has been the suspicion that summary judgment "borders on denial of due process in that it denies the opposing party his day in court." Olson v. Auto Owners Insurance Company, 700 SW 2d 882, 884, (MO App.E.D. 1985) (C. 389 #1)*

III. This Petitioner is being Held to a Mandatory, Unconstitutional, Process That Results in Justice for Sale.

1. Under No Circumstances is Justice for Sale

2. No Mandatory Expert Witness Testimony is Required in this Particular Case Due to Deceit, An Undisclosed Conflict of Interest on this Appellee/Respondent's Part, Neglect, Breach of Agreement, An Attorney Failing To Inform His Own Client of His Firm's Errors Which Resulted In Critical Evidence Not Being Considered By The Trial Court or the Upper Level Courts on Appeal, Etc.

3. Cross Examination of the Appellee/Respondent's Expert Witness Pre-Trial is also Justice for Sale. The Respondent's Expert Witness Also Used the Incorrect "Level of Care" to be Applied to the Respondent's Performance

4. Many Alternatives to Expert Witness Testimony Acceptable by Law were Proposed and Improperly Rejected by the Court

**See App. P for full citation** ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) as amended through 1966 - ARTICLE I. DECLARATION OF RIGHTS / Section 13.

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1. Under No Circumstances is Justice for Sale

JUSTICE FOR SALE is clearly not allowed by our Law. The Federal Constitution and the Alabama Constitution and our

Law states *"That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of Law; and right and justice shall be administered without sale, denial, or delay"*. As shown below, a mandatory expert witness is not required by Law in this case or appeal (due to breaches in agreements, neglect, deceit, an undisclosed conflict of interest, withholding errors made by the Petitioner's own attorney - deceiving his own client and not informing the Petitioner of the errors which denied the Petitioner the true facts of what had occurred during the handling of her cases which denied her the opportunity to make an informed and intelligent decision in how to proceed with her case, etc. The Respondent argued and the trial court held that mandatory expert witness testimony was required in this case and as shown below, mandatory expert witness testimony in this case is not required by Law and is not required in all cases such as this one which shows that again the inconsistency in applying the Law to this case which also is in violation of the Fourteenth Amendment. If mandatory expert testimony were required in all cases such as this one, it would be justice for sale and unconstitutional. Therefore due to the circumstances, this Petitioner has been unconstitutionally required to purchase, pre-trial, her attempt to receive justice.

2. No Mandatory Expert Witness Testimony is Required in this Particular Case Due to Deceit, An Undisclosed Conflict of Interest on this Appellee/Respondent's Part, Neglect, Breach of Agreement, An Attorney Failing To Inform His Own Client of His Firm's Errors Which Resulted In Critical Evidence Not Being Considered By The Trial Court or the Upper Level Courts on Appeal, Etc.

A mandatory expert witness is not required by Law in this appeal (due to breaches in agreements, neglect, deceit, and undisclosed conflict of interest, the Petitioner's former attorney failing to inform her (his client at that time) of his firm's errors. This Respondent's firm failed to enter critical evidence which included but was not limited to notice of immediate injury, supervisors statements and reports that supported the injured employee's (which is the Petitioner in

this Petition) account of events, numerous co-worker's testimony that supported this Petitioner's claim, numerous documents and statements from physicians that stated that this Petitioner's injuries were severe, solely job related, and not the result of any pre-existing condition, nor were her injuries the result of any other accident, etc. This Respondent's firm failed to enter this evidence prior to the Judge presiding over the "underlying case or the worker's comp case" made his ruling. After the adverse ruling, this Respondent scrambled to attempt to enter critical evidence supporting the Petitioner's claim but the original opposing counsel successfully argued that Tidwell's (the Petitioner in this Petition) attorneys had this evidence at the time of trial but had failed to enter the evidence prior to the Judge making his ruling and that due to their error that the evidence could not be considered by the trial court or the upper level courts on appeal. In the Opposing Counsel's Post Trial Motion (in the underlying case), he states that the evidence was of such quality that it could have an effect on the outcome of the trial but due to the Petitioner's Counsel's (Respondent in this Petition) untimely submission of the evidence that the critical evidence could not be considered. Instead of being informed of what had occurred, the Petitioner was led to believe that the original opposing counsel had not honored a pre-trial stipulation (and that burden of proof was not an issue and that only the degree of her disability was to be determined at her hearing). After all appeals were exhausted, a firm but civil confrontation occurred between this Petitioner and the original opposing attorney (which was blamed by the Respondent for the unjust adverse ruling) took place. It was then that this Petitioner learned that it was her attorney (and this Respondent) that erred and they did not disclose their error to her, which placed their interest above that of their client. This should be considered a "cardinal sin" among the legal profession. The original opposing counsel turned over documents to this Petitioner proving that he in no way breached any pre-trial stipulation, burden of proof was an issue at trial and the hearing was not a "disability

determination only", nor was he the cause of the adverse ruling. This was this Respondent's excuse for not entering the overwhelming evidence establishing burden of proof. This was untrue and the client was deceived. In a rare but courageous act, this attorney has composed and submitted into evidence in this case a two page affidavit on this Petitioner's behalf. Although this attorney is an "expert witness" (on the original witness list) and his affidavit was accepted into evidence, his testimony was not considered that of an "expert" because he is a factual witness and can not be paid for his testimony. This is clearly justice for sale. The Opposing Attorney's Affidavit in the Underlying Case is located in he Record at C. 309.

3. Cross Examination of the Appellee/Respondent's Expert Witness Pre-Trial is also Justice for Sale, The Incorrect Level of the Respondent's Performance was evaluated according to the Respondent's own "expert affidavit", and the Petitioner was repeatedly denied simple answers during discovery which impeded in her questioning the Respondent's expert and it also impeded in her properly hiring an expert witness.

In addition, by due process of Law, this Appellant/Petitioner is entitled to cross examine the Appellee's/Respondent's witness at trial. She is not required to "buy" the opportunity prior to trial in a deposition. This could be considered "Justice For Sale" pre-trial. If after the cross examination of the Appellee's/Respondent's expert witness in a hearing, the Judge determines that it was not important to have the notice of injury in a worker's comp case, the supervisor's testimony confirming that immediate notice was indeed given, statements from physicians stating that her injuries were severe and solely job related - not caused from any pre-existing condition nor was it caused from an other accident, and that her machine partner had been identically injured and he did receive his worker's compensation benefits with "any other lawyer", then the Judge can issue Judgment as a Matter of Law. Since it is an elementary fundamental of Law that the injured employee provide proof of notice of injury, the supervisors statement acknowledging that all claims made by the injured employee

are truthful, and the many physicians statements which confirmed that the injured employee's injuries were solely job related and not the result of any pre-existing condition or any other accident, and that her machine partner was identically injured (also mentioned in the original opposing counsel's affidavit - he handled both cases for the Petitioner's employer), for the Appellee/Respondent's Expert to state that these matters are of no importance would be a misrepresentation and an insult to the Court. No reasonable court could conclude that these matters were of no importance and the pre-paid testimony that they are is requiring this Petitioner to pay for testimony pre-trial in an attempt to achieve justice. This again draws into question whether or not this is Justice for Sale.

In addition, the Respondent represented that the attorney that he would select to represent her in her worker's comp case would be a "worker's comp specialist". In the Respondent's expert witness' affidavit, the incorrect "level of care" was used. Instead of that of a general attorney, the evaluation of the Respondent's performance should have been that of a "worker's comp specialist". During the procedural portion of this case, the Petitioner requested that his affidavit be Stricken from the Record for two reasons (1) the incorrect level of care was used to evaluate the Respondent's performance according to his own claims at the time that he was hired, and (2) the Respondent repeatedly refused to provide answers during discovery such as what made him a "specialist"; he even refused to state how many worker's comp cases he had ever handled (ballpark range). This refusal or vague discovery answers impeded in the Petitioner's ability to prepare to question the Respondent's expert witness (if she could have afforded to at that time) and it impeded in her hiring an expert witness based on the appropriate level of care that the Law required the Respondents performance to be evaluated at. *Ala Code 1975, Statute 6-5-572 (3) (a) and (b); also see Statute 5-5 580* states that if a legal service provider advertises as a specialist, that his level of care should be evaluated as that of the "specialist" that he claims to be. This was not done in this case.

4. Many Alternatives to Expert Witness Testimony Acceptable by Law were Proposed and Improperly Rejected by the Court (all proposed to the Trial and Appellate Court are located in Appendix N.

In cases of betrayal and deceit, such as in this case, the Law does not even require any expert witness testimony and no other alternative to Expert Witness testimony is required, much less mandatory. However, in an attempt to offer alternatives to please the Court and insure that her case advance and properly be determined by "a finder of fact", the Petitioner proposed numerous alternatives to expert witness testimony acceptable by Law. The Court rejected all alternatives to expert witness testimony and the Court was unreasonable and in error by doing so. This violated the Petitioner's rights to due process and consistency in rulings which is required by the Fourteenth Amendment, where justice could ultimately and appropriately be served. The alternatives accepted by Law to pre-paid expert witness testimony allowed by Law but all denied by the Court include but is not limited to the following (See documents submitted to trial court in volume 2 appendix M:

1. In a rare but courageous act, the original defendant's attorney that handled this Petitioner's case in the underlying case, voluntarily composed and submitted into evidence in this case a two page affidavit on this Petitioner's behalf. Although this attorney qualifies as an "expert witness" (on the original witness list) and his affidavit was accepted into evidence, his testimony was not considered that of an "expert" because he is a factual witness and can not be paid for his testimony. This is clearly justice for sale. For the original opposing counsel to come forth voluntarily on the Petitioner's behalf should signal the Court's that the Petitioner has suffered a substantial injustice. How many other Petitioner's have the affidavit and support of the original defendant's attorney that handled the underlying case in a legal malpractice action? This affidavit is in the Record at C. 309.

2. The Petitioner's machine partner was also severely injured. He received his worker's comp, benefits, and

medical care years ago. The original defendant's attorney in the underlying case also handled this Petitioner's machine partner's case for their employer and he does mention this in his affidavit supporting this Petitioner's position. With her machine partner identically injured, this should be sufficient to satisfy the "in a like" case standard and the hypothesis of an expert witness can be substituted for actual facts in this case instead of a theory or educated guess. To require the Petitioner to purchase an educated guess when actual events that occurred can be used which are already admitted to by opposing counsel, this would surely be considered Justice for Sale and unconstitutional under any Court's reasonable standards. This also shows the "inequality" in the rulings, which goes back to this Petitioner's violation of her Fourteenth Amendment Rights. The outcome of her and her partner's worker's comp trial were inconsistent. He received benefits, wages, and medical care years ago while working on the same machine and performing the same job duties. The Partner's settlement and this Petitioner's worker's comp trial (the underlying cases) were handled on the very same day. The trial Court did not have the benefit of this witness' testimony because my former attorney and the Respondent never bothered to contact this witness, nor did they even bother to contact any supervisors or other co-worker's until after the adverse ruling had already been announced.

3. In cases such as this one, no expert witness testimony is required because the Petitioner is not asserting that her former attorney did not select the correct legal strategy for her cases, this sort of claim would benefit from an expert witness due to the fact that it would be an educated guess of how another theory or plan might have worked. This case is about the Respondent having a legal strategy, failing to follow their own plan, not informing their own client (which is the Petitioner), unjustly blaming opposing counsel for the adverse ruling, when it was their own errors that they failed to disclose to their client. This type of breach does not require any expert testimony. When a person claims that he is handling something and then he fails to do it, hides the error and fails to disclose what has occurred to his own

client, that has nothing to do with "similar providers" in the area. This involves fraud, misrepresentations, deceit, etc. as alleged in the original complaint. Allegations of deceit under the Law do not require any expert witness testimony *"However, a deceit count was revised and permitted to go to the jury, as it would not require expert testimony."* 17 Mass. App. At 565-567, 460 N.E.2d at 1050. Also, a new ruling of Law in the State of Alabama which overruled Mandatory expert witness testimony and expanded the exceptions to the expert witness rule was announced on November 27, 2002 after this case was on Appeal but before the Supreme Court denial. See Alabama Supreme Court Case 1011582 11/27/02 Heath v. HealthSouth Medical Center, 2002). And see Motion filed with the Alabama Supreme Court in my request to allow expert witness exceptions that applied to my case. They Alabama Supreme Court Denied my Petition with No Opinion and this also was a violation of my 14th Amendment Rights to equal protection under the Law. Also, this case is of National Importance as Described in Volume 2, App. O.

4. By reviewing this Petition so far, one would be inclined to believe that this Petitioner did not have an expert witness selected. Even if she had not, this would be a legal technicality which should not totally avoid a decision on the merits for any litigant as shown by the Law below. However in this particular case, that is especially true because this Petitioner is an involuntary Pro'se litigant and as argued above, it is against the legal precedent set by the United States Supreme Court applicable to the Pro'se to deprive those special litigants of their appeals on technicalities. So even if this Petitioner did not have an expert witness, it would be a technicality and as any litigant but especially an involuntary Pro'se litigant who had been denied her rights to counsel, she should have been given a fair opportunity to try to prevent the deprivation. Here are the facts of what occurred with this Petitioner's expert witness. As shown in the Record at C. 231-C. 234, it is fully explained that the Petitioner selected an expert witness and a deposition was scheduled. This was in October (just after the tragic events of September 11th). An emergency arose and the Petitioner's

expert witness had to leave the country to save a sick child (she adopted him) from Tajikistan. The Respondent was notified and the deposition was canceled. The Petitioner confirmed with the Court Reporting Agency that the deposition was indeed cancelled. Before the Petitioner's expert witness returned from overseas (travel was extremely difficult due to the terrorist events and the extra security in trying to travel during this period of unrest), the expert witness's mother suddenly and unexpectedly died. Due to these reasons, the Petitioner requested an extension in discovery so the Respondent would have the opportunity to deposition this expert witness if they desired to do so. The trial Court denied the Petitioner an extension in discovery even though the expert witness sent him an affidavit explaining the situation of the sudden death in her immediate family and that she was unable to testify at that time. The Respondent's counsel set up a "fake deposition" knowing that neither the Petitioner, nor her witness was notified of a deposition that was to take place. Then the Respondent entered this "fake deposition" into the Record along with their Motion of Summary Judgment. When the Petitioner received the Respondent's Motion for Summary Judgment, she was upset when she saw the "fake deposition" placed into evidence. The Petitioner was so upset that she took a witness, with pen and paper in hand, to the Court Reporting Agency and the Agency admitted that the deposition was canceled and that it was suddenly rescheduled by the Respondent's counsel's assistance and that they all were aware that the Petitioner or her witness were never notified that a deposition was ever even scheduled (Affidavits of the three witnesses can be found at C. 195, C. 197, and C. 262. The "fake deposition" is located in the Record at C. 174 - 176. The Petitioner asked the trial court to strike the erroneous deposition that was placed in evidence but the Petitioner's request was denied. The Petitioner, the witness taken to the Court Reporting Agency, and the expert witness all signed and submitted affidavits confirming the above but the bogus evidence was allowed to remain in the record, along with the affidavits that explained

what had actually occurred. Other issues that occurred included the Petitioner repeatedly requesting the Courts to compel Discovery from the Respondent - this was never done and the Petitioner's rights to full discovery was impeded. The Petitioner requested a continuance for her expert to return from her mother's funeral but that request was also denied. When a continuance was denied to await the return of the expert, the Petitioner requested to be allowed to select another expert - her request were denied. When the expert was out of town due to her mother's death, the files that she was reviewing was locked in her office and unavailable to the Petitioner. There was only one other way to get that "expert opinion". It was from the original defendant's attorney that had handled the underlying case and had files of his own. In a rare move, this attorney composed and submitted a two page affidavit on the Petitioner's behalf that by law substituted as an expert witness opinion. There was only one problem. This attorney was a fact witness because he was involved in the underlying case and he could not be paid for his testimony, therefore, his affidavit was not considered an expert opinion. This made it impossible for this Petitioner to advance her case to trial due to the unreasonable denials by the Courts. In addition, other Laws and Doctrines that are acceptable were also rejected further eliminating all possibilities of this Petitioner being allowed her day in court. The other acceptable Laws and Doctrines included: 1) C. 220 of the Record shows that the Petitioner submitted substantial and concrete evidence supporting her claims with 67 attached exhibits to her opposition to the Defendant's Motion of Summary Judgments which by law does not require expert witness testimony. See Brief of the Appellant, page 23. 2) Brief of the Appellant, page 25 - The Petitioner applied the Doctrine of Res ipsa fully explaining the conditions backed by the supporting citing of Law that states *"A plaintiff who establishes the elements of res isa loquior can withstand a motion of summary judgment and reach the jury without direct proof of negligence"*. *Cox v. May Department Store Company 903 P. 2d 119 (1995).* This was also improperly rejected by the Courts.Many other

alternatives were presented to the trial Court and the Appellate Courts but due to the limitation in this Petition all can not be adequately argued. Proper arguments are located in the Record and in the Brief of the Appellant to the Alabama Supreme Court. *". . . [t]he state may violate the constitution by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation.* Daniel v Williams, 474 US 327 at 337/8, (1985); *"[d]ecisions on the merits are not to be avoided on the basis of "mere technicalities"* Foman v Davis, 371 US 178 at 181, (1962); NAACP v Alabama, 377 US 288, (1964); Hovel v Elliott, 167 US 409 at 413/14, (1897); *"The use of technicalities to deprive a litigant of his appeal is a violation of the Rules of Civil Procedure, and a constitutional deprivation." "[W]e no longer approach pleadings searching for a flaw, a technicality upon which to strike down a claim or defense as was formally the case at common law"* - Bertlesman & Phillips, Ky Practice, Vol 6 at p. 144. - Smith v Isaacs, 777 SW2d 912 at 715?, (1989); *"[T]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by council may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."* Conley v Gibson, 355 US 41 at 48, (1957); See Additional Citations to this Law in Volume 2, Appendix K); *"[i]n determining whether rights were denied we are governed by the substance of things and not mere form."* L&N v Schmidt, 177 US 230 at 236, (1899) as cited in Simon v Craft, 182 US 427 at 436, (1900); In Re Summers, 325 US at 567, (1944) citing Nashville C&RR v Wallace, 288 US 239 at 249, (1918); Central Vermont RR v White, 238 US 507 at 511, (1914) as cited in US v Obermeier, 186 F2d 243, (1950); *"..... [d]ue process of law guaranteed by the 14th Amendment has regard to substance of right and not to matters of form and procedure . . . the entire course of proceedings, and not merely one step, must be considered"* Frank v Mangum, 237 US 309, (1916) *"[W]hile technical rules of pleading are maintained to protect rights of parties, under the code system technical rules should not be used to defeat the ends of justice."* Catron vs Jones, 135 SW2d 419, (1940); Roe v Gentry, 162 SW2d 208 at 210, (1942); Jordan v Olive Hill, 162 SW2d 229 at 231, (Ky 1942); Logan v Bradford, 178 SW2d 607, (Ky 1944); Stivers v Baker, 9 SW 491 at 492, (Ky

*1888); Ashland Oil v Hudson, 275 SW2d 585, (Ky 1955); Maggard v Johnson, 229 SW2d 764, (Ky 1950); McBride v Moss, 437 SW2d 726, (1969);*

Unreasonable Denials also Violated This Petitioner's Rights to Present Her evidence to a Finder of Fact, So Justice Could be Served. As discussed above, Justice for Sale is clearly not allowed by our Law, however in this case, this Petitioner also had to endure denials which were unreasonable. Here again our Federal Constitution and the Alabama Constitution and our Law states *"That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of Law; and right and justice shall be administered without sale, denial, or delay"*. The Petitioner Tidwell did have an expert witness named but due to death, which could not be prevented, she could not testify before the deadline. The Petitioner requested a continuance several times before and after the discovery deadline or to be allowed to select another expert. All requests were denied by the trial Court. Under Our Law, Summary Judgment is Not appropriate in cases such as this one due to the questionable credibility of one of the parties. Also all doubts were to be resolved in the Petitioner's favor and they were not. This has violated her rights to the 7th Amendment. This Petitioner Requested a Trial by Jury in this Civil Matter which is a Constitutional Right afforded to her under the *Seventh Amendment*. Instead, Summary Judgment was improperly granted to the Defendant/Appellee/Respondent denying the Petitioner her rights to a trial by jury afforded to her under the Seventh Amendment of our Constitution. It is the Petitioner's right to have a finder of fact, which in this case is a jury, to determine which party's set of facts is to be believed. In addition, summary judgment is inappropriate according to our Law in cases such as this one. In this case, the credibility of one of the party's has been called into question and is therefore not a matter to be settled in a Motion for Summary Judgment. Tidwell was the non-movant and all doubts were to be resolved in her favor. They clearly were not. The Law states *"In reviewing the district court's grant of summary judgment we*

*must review the evidence and all reasonable factual inferences in the light most favorable to the party opposing the motion.* See Welch v. Celotex Corp., 951 F.2d 1235, 1237 (11th Cir.1992). In addition to the Law dictating that summary judgment is not appropriate when the credibility of one of the parties has been questioned, *"When a party's credibility has been called into question "which at the "summary judgment" is inappropriate, because it is for the trier of fact to decide which story is to be believed."* Barbour v. Merrill, 48 F.3d 1270, 1277 (D.C.1995).See Combs, 106 F.3d at 1537 *As quoted in Chapman v. AI Transport, Nos. 97-8838, 97-9086 and 97-9269, United States Court of Appeals, Eleventh Circuit, July 13, 1999.* Volume 2, App. K

This Plaintiff/Petitioner has been forced into a Pro'se position and because of this the Law states: *"Because Plaintiff is pro se, the Court will consider factual averments (declarations or assertions) in his responses as evidence to the extent that they are not contradicted by other sworn testimony of Plaintiff."* See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991) *"allegations presented in a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers."* (Memorandum Opinion at 2 n.2) (citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10, 1996), *"Furthermore, "a court must assume a pro se plaintiff's factual allegations are true and construe his claim liberally."* The Court's have erred by not believing this Involuntary Pro'se Litigant.

The Rules of Procedure 56 was not appropriate in this case involving an Involuntary Pro'se Litigant

*Courts must accord "special attention" to Pro'se litigants faced with summary judgment motions.* Ham v. Sith, 653 F.2d 628 (D.C.Cir.1981) *"At the base of this skepticism has been the suspicion that summary judgment "borders on denial of due process in that it denies the opposing party his day in court."* Olson v. Auto Owners Insurance Company, 700 SW 2d 882, 884, (MO App.E.D. 1985) (C. 389 #1)

Although the Eighth Amendment is usually reserved for Criminal Litigants, "Cruel and Unusual Punishment" also applies in this Civil Case and it is a violation of the Petitioner's 14th Amendment rights. Due to the unjust

adverse ruling, the original defendant takes the position that my injuries are work related but because my attorney erred, that they are not responsible for my wages, benefits, or medical care. I now am left to serve a "life sentence" with no wages, benefits, or medical care. The medical providers also claim that this is work related and they aren't responsible for the medical bills and care either. I am less fortunate than a criminal defendant - at least they get a roof over their heads and medical care - I am not so lucky. My "only crime" was that I was a hard working employee that was severely injured on the job and had to hire an attorney to receive what I was rightfully entitled to in the first place. My attorney deceived me. The adverse effects that I will suffer for life is truly cruel and unusual punishment and if the Court refuses to correct this injustice, then what does our Law and the *Justice* System stand for? It is also a violation of my 14th Amendment Rights - I am not treated equally under the Law. Criminals get counsel and they are protected from cruel and unusual punishment - I am not afforded those Rights and Liberties which is in violation of my 14th Amendment Rights. The Cases Cited with the Trial Court and the Alabama Court of Civil Appeal's Denial/No Opinion Ruling do not apply to this case. The cases cited by the all of the Court, even in their No Opinion Rulings, are not relevant to the case at hand. There are so many differences; the cited cases are fully detailed in the Appendix to show the Court how these cases are not relevant to this case at all (See Volume 2). This is a case of attorney deceit, undisclosed conflict of interest, betrayal, etc. and not a "simple mistake" cited in these cases. In the other case referenced it involved an attorney who had the client's permission and when it didn't work, then he sued. These cases have no relevance to the appeal at hand. The Law in the cited cases are not relevant to this case and this lead the Courts to an erroneous conclusion in their ruling of this case. These comparisons were also used by the Court of Appeals and are not relevant to this case. See Appendix Index for each case cited by the Court as it compares to this appeal and Petition (Appendix is lengthy and is located in Volume 2/cases detailed and compared to this appeal).

Questions Presented for Review to the Courts in Alabama and Now to the Honorable U.S. Supreme Court and Copied in the Body of the Petition - In accordance with Alabama's Rules of Appellate Procedure the Petitioner, Tidwell, presented the following questions of first impression to the Ala Supreme Court and I now ask the Honorable United States Supreme Court to please consider the questions, conflicts, issues presented in this, the Body of my Petition:

Question # 1: "If an attorney fails to enter specific evidence supporting his client's position, resulting in the opposing counsel successfully having the critical evidence and testimony excluded from consideration of the trial court in a post trial motion, or excluded from consideration of the upper level courts on appeal, can that attorney conceal his error from his client? If breaches in agreements, neglect, deceit, and undisclosed conflicts of interest, etc., is shown, is expert witness testimony required?" (Question asked in Petition for Writ of Cert to the Ala Supreme Court, pages 3-4)

Question # 2: "If an attorney promises that a specific action will be handled and he fails to handle it, does the Law require expert testimony?" (Question asked in Petition for Writ of Certiorari to the Alabama Supreme Court, page 4)

Question # 3: "If opposing counsel in the underlying case in a legal malpractice action provides an affidavit and is willing to testify for the Plaintiff/Appellant/Petitioner, is the paid testimony of an expert still mandatory?" (Question asked in Petition for Writ of Certiorari to the Ala Supreme Court, p 4)

Question # 4: "If two employees operating the same machine at the same job and are identically injured, one employee receives his worker's comp but the other does not (because of the attorney's failures in Question 1), can this factual event be used in substitution for the educated guess of the expert witness? Does a litigant have to hire an expert witness to make an educated guess when an identical situation occurred? Can the actual events and identical situation be substituted for an educated guess of a paid expert witness?" (If not, is this considered Justice for Sale? (Question asked in Petition for Writ of Certiorari to the Ala Supreme Court, p 4)

CONCLUSION

As the Petitioner in this case, I have and will forever suffer the adverse effects of my attorney's dishonesty to me. This has left me in an impossible situation and I pray that this Court finds my plea for justice a cause that is important enough to warrant them granting my Petition. I know in these times it is unpopular with the Courts to file legal malpractice cases. But I would like to remind the Respondent and this Court that some legal malpractice cases are justified. The danger here is not the legal malpractice action, it is the Respondent not informing his own client of what occurred during their firm's handling of my cases. I thought that my attorney was someone that I could trust, not someone that was deceiving me and not giving me all of the facts denying me my rights to make an informed and intelligent decision on how to proceed with my cases. I was not given that opportunity, how would each of you feel. The legal malpractice claim, as unpopular as they are, is not the danger in this particular situation. The integrity of the attorneys that act ethically and honorably and the integrity of the justice system as a whole are the ones with their reputations jeopardized by the action and/or lack of actions (whichever may apply) of the few attorneys that deceive their own clients. Due to the above, I PRAY that this Honorable Court will reverse this Respondent's improperly achieved Summary Judgment and properly remand this case to trial so justice can be served and properly determined by a jury. Thank You for your consideration in this matter. The outcome of the rest of my life and my family's lives hang on your decision. We only ask that your decision be a fair one. And please remember, by your own words, *The United States Supreme Court has stated "The denial of a pro se litigant on technical ground is against the legal precedent from the US Supreme Court applicable to the pro se...[d]ecisions of the US Supreme Court rendered by written opinion are binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value."* Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974).

Supreme Court, U.S.
FILED
JUN 26 2003
OFFICE OF THE CLERK

No. 03 401

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In The

SUPREME COURT OF THE UNITED STATES

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Caren Tidwell
Petitioner/Involuntary Pro'se Litigant,
vs.
The Alias "The Law Offices of Clay Ragsdale"
Respondent,

---

On Petition for Writ of Certiorari
To The Jefferson County Alabama Civil Court
Underlying Case # CV 96-5555
To The Jefferson County Alabama Civil Court
Case # CV 96-5555 and CV 00-7410
The Honorable Judge Joseph Boohaker, Presiding
To the Alabama Court of Civil Appeals
Case #2010679

On Appeal from the Supreme Court of Alabama
Case #1020287

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# PETITION FOR A WRIT OF CERTIORARI
# VOLUME 2, APPENDIX

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Caren Tidwell*
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Birmingham, Alabama 35215
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*Involuntary Pro'se Litigant/Petitioner

116 pp

**EDITOR'S NOTE**

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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## OPINIONS AND ORDERS

The Opinions of the Jefferson County Alabama Civil Court, The Alabama Court of Civil Appeals, and The Supreme Court of Alabama are shown in detail in Volume 2 in the Appendix. Some of the Rulings are lengthy and a 2nd Volume became necessary.

Petition of Cert, page 1: The Opinions of the Jefferson County Alabama Civil Court, The Alabama Court of Civil Appeals, and The Supreme Court of Alabama are shown in detail in Volume 2 in the Appendix. Some of the Rulings are lengthy and a 2nd Volume became necessary.

This Petition is sought for review from Jefferson County Civil Court. A Motion of Summary Judgment was entered in favor of the Defendant/Respondent "The Alias The Law Offices of Clay Ragsdale" on December 20, 2001 *(Volume 2, Appendix A)*. The Petitioner; Caren Tidwell timely filed post trial motions on January 18, 2002, which were denied with no explanation on March 20, 2002 *(Volume 2, Appendix B)*. The Petitioner (Plaintiff) Tidwell timely filed an Appeal with the Alabama Court of Civil Appeals after all post trial motions were denied; The Alabama Court of Civil Appeals Affirmed with "No Opinion" on August 30, 2002 *(Volume 2, Appendix C)*. The Petitioner timely filed an Application for Rehearing on September 13, 2002, however, her Application for Rehearing was denied on *(Volume 2, Appendix E)*. The Petitioner timely filed an application of rehearing but her motion was overruled *(Volume 2, Appendix F)*. The Petitioner then filed a Petition of Cert with the Alabama Supreme Court but her Petition was Denied No Opinion even though she followed all of the Alabama Rules of Appellate Procedure Rule # 39 (k) Motion and substituted Facts for the Record as the Rules allow and the only Fact before the Alabama Supreme Court were her version of the facts since

the Record was not before the Alabama Supreme Court on preliminary review. This Denial was on March 27, 2003 *(Volume 2, Appendix G)*. This Petition was timely filed and was mailed by United States Certified Mail on June 26, 2003 *(Volume 2, Appendix H)*. According to the instructions sent to me, the jurisdiction of this Court in my Petition is invoked under *28 U.S.C. § 1254 (1)* and the *First Amendment*.

Appendix A

Entered on December 20, 2001
Anne-Marie Adams, Clerk

Located in the Record at C. 332-339

In the Circuit Court of Jefferson County, Alabama
Civil Division

Caren Tidwell
Plaintiff

v.

The Law Offices of Clay Ragsdale
Defendant

Civil Action Number CV 2000-7410

ORDER

Page 1 of 8

This matter having come before the Court on Defendant's Motion for Summary Judgment and Defendant's Motion for Relief Pursuant to the Alabama Litigation Accountability Act, the Court having considered the motions of the parties, the voluminous record contained in two black three ring binders, the authority submitted by

the parties, as well as having conducted oral argument on the motions on December 3, 2001, finds the following:

Plaintiff commenced her action on December 8, 2000 under the Alabama Legal Services Liability Act, Ala. Code Statute 6-5-570 et seq., (hereinafter "LSLA"), against the Defendants who were legal service providers. Defendants had been hired to provide representation to Plaintiff in the prosecution of her workers compensation claim against her former employer. The representation ended with the issuance of a Judgment by the Court of February 3, 1999, whereby the Circuit Court found that Plaintiff failed to carry her burden of proof and denied her relief under the Worker's Compensation Act, and the subsequent filing of a Rule 59 Motion to Reconsider which was denied by the Court. The findings of the Circuit Court were affirmed on a subsequent appeal.

The gravamen of Plaintiff's complaint is that her attorney breached the standard of care by failing to introduce testimony from certain witnesses and certain documents which would have proved medical and legal causation of her injuries to an accident that



occurred while she was acting within the line and scope of her employment, particular with regard to a January 30, 1995 incident.

To the extent that Plaintiff's claim alleges liability on Defendants for alleged breaches of the canons of ethics; the Court shall disregard such claims. In Ex parte Toler, 710 So. 2d 415 (Alabama 1998), the Court wrote with regard to such claims:

"Neither evidence of a charge of a violation of the rules of professional conduct against a legal service provider nor evidence of any action taken in response to such a charge shall be admissible in a legal services liability action and the fact that a legal service provider violated any provision of the rules of professional conduct shall not give rise to an independent cause of action or otherwise be used to support of recovery in the legal services liability action." 710 So.2d at 416.

D[illegible]D

In reviewing Defendant's motion for summary judgment, the standard is very clear, as most recently stated in Wesson v. McCleave, Roberts, Shields, & Green P.C., 2001 WL 792837 (Alabama 2001, as follows:

"In reviewing the disposition of a motion for summary judgment, we utilize the same standard as the trial court in determining whether the evidence before (it) made out a genuine issue of material fact."." Bussey v. John Deere Co., 531 So.2d 860, 862 (Ala. 1988) and whether the movant was entitled to a judgment as a matter of law. Wright v. Wright, 654 So. 2d 542 (Ala. 1995); Rules 56 (c), Ala. R. Civ. P. When the movant makes a prima facie showing that there is no genuine issue of material fact, the burden shifts to the nonmovant to present substantial evidence creating such an issue. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-798 (Ala. 1989). Evidence is "substantial' if it is of such weight and quality that fair minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." Wright, 654 So.2d at 543 (quoting West v. Founders Life Assurance Co. of Florida, 547 So 2d 870, 871 (Ala. 1989). Our review is further subject to the caveat that this Court must review the record in a light most favorable to the nonmovant and must resolve all reasonable doubts against the movant. Wilma Corp. v. Fleming Foods of Alabama, Inc. 613 So.2d 359 (Ala. 1993); Hanners v. Balfour Guthrie, Inc., 564 So.2d 412, 413 (Ala. 1998). Hobson v. American Cast Iron Pipe Co., 690 So. 2d 341, 344 (Ala. 1997)." 2001 WL 792847 at *3-4.

The Court finds that Defendants have properly supported their motion for summary judgment with the affidavit testimony of an attorney who practices in the field of workers compensation and that Defendant has made a prima facie showing that there exists no genuine issue of material fact and further, that Defendant is entitled to a



Judgment as a matter of law. This finding shifts the burden to the non-movant to present substantial evidence creating a genuine issue in dispute.

E

In presenting this evidence, the authority is quite clear that in order to establish a breach of the standard of care required of an attorney under the Act, expert testimony from another attorney familiar with the standard of care and capable of rendering an opinion that the defendant's conduct deviated from the standard is essential. In the recent law review article entitled, the professional Liability of Attorneys in Alabama, 30 Cumb. L. Rev. 453 (2000), citing as authority, the court's ruling in Phillips v. Alonzo 435 So.2d 1266 (Ala. 1983); Tonsmeire v. Amsouth Bank, 659 So. 2d 601 (Ala. 1995); and McDowell v. Burford, 646 So. 2d 1327 (Ala. 1994), the article states:

"The Plaintiff must present expert testimony to prove a prima facie case in a malpractice suit against an attorney. Although in an early opinion the Alabama Supreme Court held that expert testimony was unnecessary, more recently the court implied that lay jurors do not possess the degree of legal education, training, or experience to adequately evaluate the propriety of an attorney's actions. In Alabama, there, the plaintiff is required to produce expert testimony that the defendant attorney breached the standard of care and that injury proximately followed. 30 Cumb LR at 467."

Plaintiff has come forward with the affidavit of Dr. Susan Key, executed on November 3, 2001. However, this affidavit does not address the issue of the standard of care to have been applied by Defendant, nor whether or not there was a breach of the standard, nor whether such alleged breach caused or contributed to the adverse result Plaintiff received in her workers compensation claim.

Following the date of the hearing, and well beyond the time for the submission of any additional evidentiary matters, Plaintiff delivered to the Court the affidavit of Craig Alexander, dated December 6, 2001. This affidavit was submitted beyond the time allowed by the ARCivP 56 for submission of evidentiary materials and beyond the time fixed



In the Court's September 28, 2001 Scheduling Order for the designation of expert, which was October 11, 2001.

Defendant has filed timely objection to the submission of the Alexander affidavit.

Out of an abundance of caution and allowing for the fact that Plaintiff is representing herself, pro'se, in this matter, thus allowing for a liberal interpretation of the rules of procedure so as to advance the cause of justice, the Court will, over Defendant's objections, consider the matters sworn to in the Alexander affidavit. As set forth in The Professional Liability of Attorneys in Alabama, 30 Cumb L. Rev. 453 (2000), plaintiff's burden in this case is as follows:
"In a suit for legal malpractice, the plaintiff has the burden of proving three separate claims. First, the traditional elements of an action for negligence apply. The plaintiff must prove a duty, a breach of the duty, that the breach was the proximate cause of injury and damages." Second, the plaintiff has the unique burden in a legal malpractice action of showing that "but for" the defendant attorney's act or omission, the plaintiff would have recovered in the underlying cause of action or that the outcome of the case would have been different. Third, only after the plaintiff satisfies the trier of fact that he has met his burden of proof as to the defendant attorney's negligent conduct should the court determine the issue of damages." 30 Cumb LR at 466.

In light of this burden of proof and the fact that Defendant has come forward with his own affidavit, in reviewing the Alexander affidavit, the Court can no find that the affiant has set forth the standard of care to have been applied by Defendant Attorney. Our Court has stated that the LSLA is modeled after the Alabama Medical Liability Act (hereinafter referred to as the "AMLA". See Michael v. Beasley, 583 So. 2d 245 (Ala. 1991). The Court may therefore refer to statutory interpretations of the AMLA in considering cases arising under the LSLA. In Pruitt v. Zeiger, 590 So. 2d 236 (Ala. 1991), a case decided under the AMLA, the Court wrote:



"The failure of an expert to establish the standard of care results in lack of proof essential to a medical malpractice plaintiff's case. Rosemont, Inc. v. Marshall, 481 So.2d 1127

(Ala. 1985). In order to establish the standard of care in this case, Dr. Taylor was required to enumerate the prevailing medical procedures in the national medical community that reasonably competent physicians would ordinarily utilize when acting in the same or similar circumstances. Bates v. Meyer, 565 So.2d 134, 136 (Ala. 1990). If the standard of care is not established there is no measure by which the defendant's conduct can be gauged. Dobbs v. Smith, 514 So. 2d 871 (Ala. 1987). We find that the deposition testimony of Dr. Taylor failed to establish the standard of care and, therefore, it was not possible for Dr. Taylor to testify as to Dr. Zeiger's deviation from any such standard. See McMickens v. Callahan, 533 So.2d 579." 590 So.2d at 237-38.

For failure to state the appropriate standard of care, the Alexander affidavit is deficient in establishing substantial evidence on the issue of breach of the appropriate standard of care.

Plaintiff seeks to assert to the Court alternative theories of establishing her burden of coming forward with substantial evidence to create a genuine issue with regard to a material fact. Plaintiff's efforts to establish herself as a professional expert with regard to the practice of law cannot be accepted by the Court. Plaintiff also asserts a theory that because Defendant attorney filed a Rule 59 motion for new trial in the workers compensation case, under a good faith belief that if the Court would consider proffered testimony of two witnesses who were available to testify at the trial, the Court would have reached a different conclusion, that such conduct establishes Plaintiff's burden with regard to breach of the standard of care and causation.

The Court again refers to the Law Review article cited hereinabove and the authority cited therein with regard to the issue of exceptions to the expert witness rule, as follows: "Considering the unique burden of proof required of a plaintiff in a legal malpractice case, exceptions to the expert legal testimony requirement, although limited, could include instances in which the plaintiff is a licensed and practicing attorney, or in which a text or treatise which in and of itself establishes the standard of care has been admitted. Even if

these exceptions apply, the plaintiff must still present evidence of causation or the plaintiff's case should fail."



The Alabama Supreme Court has described the general requirements of expert testimony in a legal malpractice case. Expert testimony is necessary even when there has been an adverse finding against the defendant attorney's conduct in another forum. A ruling of ineffective representation by the attorney in a criminal action is not sufficient to support a finding of a breach of the standard of care in a claim for legal malpractice....The Supreme Court of Alabama rejected the plaintiff's contention that a finding of ineffective counsel was equivalent to a finding of legal negligence. Although the plaintiff established that the attorney had been found to have provided ineffective counsel, the plaintiff did not establish that he would have received a better result had the defendant attorney acted differently. Therefore, while the plaintiff may have presented evidence that the attorney failed to fulfill his duty there was no evidence that this failure proximately caused the plaintiff's injury.

The Court, recognizing that Plaintiff is not licensed to practice law in Alabama cannot accept her rather detailed and voluminous affidavit as expert testimony on the issue of establishing the standard of care, a breach of that standard, or of causation. The Court does not have before it a learned treatise, which would substitute as proof of the requisite standard of care of its breach. Therefore, the Court does not have in the record before it, submissions which would substitute for the absence of expert testimony from the Plaintiff.

As a final measure to determine whether there is a triable issue, the Court has conducted its own independent review of the documents admitted into evidence and which were available to the Court during its deliberation over the February 3, 1999 order. The Court also reviewed the "black binder" of documentary evidence, which Plaintiff has alleged were omitted from the record therefore leading to the adverse result in her case. The Court found that the parties did enter into a stipulation that the October 30, 1995

incident, which resulted in injury to Plaintiff, was an accident that arose within the line and scope of Plaintiff's employment. There was no similar stipulation with

Regard to the January 1995 incident. The Court has determined that there were numerous documents before the Circuit Court which indicated that the cause of Plaintiff's injury was work related and some that indicated it was the result of degenerative disc disease. The Court can therefore not conclude that the introduction of other evidence would had a material result on the outcome of the other evidence, which Plaintiff proposed, would have been merely cumulative.

With regard to the "black binder" of omitted evidence, the Court's examination indicates that much of this is comprised of correspondence from Plaintiff to her attorneys in which the deterioration of the lawyer-client relationship is documented. There are various assertions from Plaintiff demanding that certain evidence be made a part of her case. Much of the evidence, however, consist of statements and documents, which tend to prove that other employees working in the same job on the same equipment suffered on the job injuries for which they received benefits of workers compensation. The Court cannot find, as a matter of law and without the benefit of affidavit testimony of an expert witness that omission of such testimony breached the standard of care and that if it did breach the standard, that its omission would have materially affected the outcome of the underlying legal proceeding.

The aforementioned matters having been considered by the Court, as well as the authority cited therein, the Court herby finds that Defendant's motion for summary judgment is due to be and is hereby Granted.

After fully considering all of the matters set forth hereinabove, and with particular consideration of the fact the Plaintiff has prosecuted her case pro se, the Court is not of the opinion that the Plaintiff has violated the Alabama Litigation Accountability Act. Therefore, with regard to Defendant's motion for relief under that Act, the Court

hereby finds that said motion is due to be and is hereby Denied.
Page 8 of 8

These rulings having resolved all issues between these parties on all claims, the Court hereby makes this order final under the provisions of Rule 54 (b) and taxes costs as paid.
DONE AND ORDERED THIS THE 18TH DAY OF DECEMBER, 2001.

Judge Boohaker
Circuit Judge

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Appendix B

January 18, 2002

Caren Tidwell
Plaintiff/Appellant/Petitioner
v.
The Alias "The Law Offices of Clay Ragsdale"
Defendant/Appellee/Petitioner

Plaintiff timely files Post Trial Motions on January 18, 2002. A booklet of evidence was attached (Plaintiff's/Appellant's Exhibits 1 through 61) to this Motion and is a part of the Designated Certified Record on Appeal. The Trial Court Denied this Motion with no explanation on March 20, 2002.

CV-00-7410
Jefferson County Civil Court Judge Boohaker presiding.

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Appendix C

August 30, 2002

State of Alabama — Judicial Department
The Court of Civil Appeals
Special Term, 2002

2010679

Caren Tidwell
v.
The Alias "The Law Offices of Clay Ragsdale"

Appeal from Jefferson Circuit Court (CV-00-7410)

YATES, Presiding Judge

AFFIRMED. NO OPINION.

See Rule 53 (a) (1) and (a) (2) (E), Ala. R. App. P.; Green v. Ingram, 794 So. 2d 1070 (Ala. 2001); Independent Steave Corp. v. Bell, Richardson & Sparkman, P.A., 678 So. 2d 770 (Ala. 1996); Pryor v. Brown & Root USA, Inc., 674 So. 2d 45 (1995); Tonsmeire v. Amsouth Bank, 659 So. 2d 601 (Ala. 1995); Wilma Corp. v. Fleming Foods of Alabama, Inc., 613 So. 2d 359 (Ala. 1993); West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870 (Ala. 1989); Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794 (Ala. 1989); and Bussey v. John Deere Co., 531 So. 2d 860 (Ala. 1988)

This case was transferred to this court by the Supreme Court, Pursuant to Statute 12-2-7- (6), Ala. Code 1975.

Thompson and Pittman, JJ. Concur.

John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said court

Witness my hand this 30th day of August, 2002

L

Signed by John Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama
Court of Civil Appeals
300 Dexter Avenue
Montgomery Alabama 36104-3741
(334) 242-4095

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Appendix D

Application for Rehearing with Proposed Statement of Facts Properly Included mailed on September 13, 2002.

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Appendix E

Denial of Rehearing. Denied No Opinion.

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Appendix F

Rehearing Overruled – No Opinion.

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Appendix G

Other Opinion and/or Action that was not required in the Jurisdictional Statement:

In The Supreme Court of Alabama

1020287

Caren Tidwell
Petitioner
v.

M

The Law Offices of Clay Ragsdale
Respondent

On November 27, 2002, the Appellee/Respondent files the Respondents' Reply Brief to Petitioner's Petition for Writ of Certiorari. See full case in New Law Overruling This Decision in Appendix O.

In The Supreme Court of Alabama

March 28, 2003

Ex parte Caren Tidwell. Petition for Writ of Certiorari to the Court of Civil Appeals (In re: Caren Tidwell v. The Alias "The Law Office of Clay Ragsdale") (Jefferson Circuit Court: CV-00-7410; Civil Appeals: 2010679).

Certificate of Judgment

Writ Denied

The above cause having been duly submitted, it is considered and ordered that the petition for writ of certiorari is denied.

Writ Denied - No Opinion

See, J. - Moore, C.J., and Brown, Harwood, and Stuart, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 28th day of March, 2003.

Signed by
Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

N[illegible]

Ruling on the same date from The Supreme Court of Alabama

In The Supreme Court of Alabama

March 28, 2003

1020287

Ex parte Caren Tidwell. Petition for Writ of Certiorari to the Court of Civil Appeals (In re: Caren Tidwell v. The Alias "The Law Office of Clay Ragsdale") (Jefferson Circuit Court: CV-00-7410; Civil Appeals: 2010679).

NOTICE

Respondent's motion for frivolous appeal is denied.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 28th day of March, 2003.

Signed by
Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

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Appendix H

Filed Petition of Cert to the United States Supreme Court timely filed. A letter of deficiency was sent to the Petitioner and corrections were requested by the Clerk. The corrected Petition was timely returned.

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Appendix I

Other Opinion and/or Action that was not required in the Jurisdictional Statement:

In The Supreme Court of Alabama

May 28, 2002

Caren Tidwell v. The Alias "The Law Office of Clay Ragsdale" (Appeal from Jefferson Circuit Court: CV-00-7410).

ORDER

It IS ORDERED that this cause is transferred to the Court of Civil Appeals pursuant to Statute 12-2-7, Code of Alabama 1975.

It is Further Ordered that further proceedings in this cause shall be filed with the Court of Civil Appeals pursuant to the rules of procedure applicable to that court.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 28th day of May, 2002.

Signed by
Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

**********

Other Opinion and/or Action that was not required in the Jurisdictional Statement:

June 04, 2002

The Court of Civil Appeals of Alabama

RE: 2010679

Caren Tidwell v. The Alias "The Law Offices of Clay Ragsdale" (Appeal from Jefferson County Circuit Court: CV 00-7410.)

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:

Appellee's Motion for Dismissal for Non-Compliance with the Alabama Rules of Appellate Procedure is DENIED.
Signed by
John H. Wilkerson, Jr., Clerk
Court of Civil Appeals

Court of Civil Appeals
300 Dexter Avenue
Montgomery Alabama 36104-3741
(334) 242-4095

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Appendix I

Other Opinion and/or Action that was not required in the Jurisdictional Statement:

July 8, 2002

State of Alabama
Court of Civil Appeals

2010679
Caren Tidwell v. The Alias "The Law Offices of Clay Ragsdale" (Appeal from Jefferson Circuit Court: CV-00-7410).

On July 8, 2002, the Appellant's Reply to the Brief of the Appellee was timely filed.

Included on this certificate of Service it states:

*Due to circumstances beyond the Plaintiff Tidwell's control, Tidwell request that this Court apply Alabama Rules of Civil/Appellate Procedure - Rule 2 - The Suspension of the Rules. The Plaintiff Tidwell has requested assistance of counsel on numerous occasions. The Court and the Bar Association in Alabama have failed to assist Tidwell in her request for counsel. Lack of counsel and funds has severely prejudiced Tidwell's rights. Tidwell lost all wages and has had to pay over $30,000 for her own medical needs. Tidwell can not afford to buy the testimony of an expert witness at the present time. She has provided the Court with several alternatives which she prays the Court of Appeals will accept. Tidwell request that the Court apply Rule 2 in case she unknowingly and/or deletes a step in the Appellate Process. Tidwell wants the Court to know that she is trying very hard to comply with the complicated rules but she is not an attorney. The application of Rule 2 is not being requested where Tidwell can totally ignore the Rules of Procedure. Tidwell is making a genuine and sincere attempt to comply with all of the "legal rules".

Appendix I

Other Opinion and/or Action that was not required in the Jurisdictional Statement:

September 13, 2002

R-[illegible]

State of Alabama
Court of Civil Appeals

2010679
Caren Tidwell v. The Alias "The Law Offices of Clay Ragsdale" (Appeal from Jefferson Circuit Court: CV-00-7410).

The Brief in Support of Appellant's (Petitioner's) Application for Rehearing was timely filed.

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Appendix I

Other Opinion and/or Action that was not required in the Jurisdictional Statement:

December 30, 2002

The Supreme Court of Alabama
1020287

On December 30, 2002, the Appellant/Petitioner Tidwell filed a Motion that alerted the Alabama Supreme Court that a New Ruling of Law Regarding Exceptions to the Expert Witness Testimony in which Tidwell states in her Motion, page 7-8, "Since the time of Tidwell's filing her appeal, the Alabama Supreme Court has overruled mandatory Expert Witness Testimony and Expanded the Exceptions to the Expert Witness Rule (See Alabama Supreme Court Case 1011582 – Released November 27, 2002, Heath v. HealthSouth Medical Center, 2002).

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Appendix I

Other Opinion and/or Action that was not required in the Jurisdictional Statement:

April 9, 2003

State of Alabama
Court of Civil Appeals

2010679
Caren Tidwell v. The Alias "The Law Offices of Clay Ragsdale" (Appeal from Jefferson Circuit Court: CV-00-7410).

Please find the exhibits in the above-referenced case. Should you have any questions, do not hesitate to call.

Signed by
John H. Wilkerson, Jr.
Clerk, Court of Civil Appeals
Court of Civil Appeals
300 Dexter Avenue
Montgomery Alabama 36104-3741
(334) 242-4095

To: Hon. Anne-Marie Adams
Cc: Caren Tidwell
Robert M Girardeau, Esq.
Martha Leach Thompson, Esq.

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Appendix I

Other Opinion and/or Action that was not required in the Jurisdictional Statement:

July 1, 2003

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Re: Caren Tidwell v. Law Offices of Clay Ragsdale

Letter of Deficiency regarding first Petition for Writ of Certiorari from the Clerk at the United States Supreme Court. Corrections made per Court Clerk's request and timely refiled and mailed on or before August 30, 2003.

William K. Suter, Clerk
By
Jeffrey Atkins
(202) 479-3263

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Appendix I

Other Opinion and/or Action that was not required in the Jurisdictional Statement:

Corrections as requested were timely filed & returned to the Clerk

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**OTHER RULINGS, OPINIONS, ORDERS, AND FINDING OF FACT**

Petition of Cert, page 28: The cases cited with the Trial Court, The Alabama Court of Civil Appeal's Denial/No Opinion Ruling do not apply to this particular case. This led to the Court to an erroneous conclusion of Fact and Law in their ruling in this case. The cases cited by the Court in their "No Opinion" Ruling are not relevant to the case at hand. There are so many differences; the cited cases are fully detailed in the Appendix to show the Court how these cases are not relevant to this case at all *(See Volume 2)*. The Law in the cited cases is not relevant to this case and this lead the Courts to an erroneous conclusion of Fact and Law in their ruling of this case. These comparisons were provided to the Courts in an application for rehearing, which was overruled.

See Appendix Index for each case cited by the Court as it compares to this appeal and Petition *(Appendix is lengthy and is located in Volume 2).*

■■■

This case was transferred to this court by the Supreme Court, Pursuant to Statute 12 2-7- (6), Ala. Code 1975.

Thompson and Pittman, JJ. Concur.

John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said court

Witness my hand this 30th day of August, 2002

Signed by John Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama
Court of Civil Appeals
300 Dexter Avenue
Montgomery Alabama 36104-3741
(334) 242-4095

.....

After the Alabama Court of Civil Appeals listed these cases that were not relevant to the appeal at hand, the Petitioner presented the Alabama Court of Appeals with an Appendix comparing the cases that they had relied on detail by detail showing how these cases were not relevant. The comparisons that were presented to the Alabama Court of Civil Appeals were detailed as follows:

**Also, Please see references that are a part of the record on appeal in the application of rehearing petition to the Upper Level Courts in Alabama and in Post trial Motions**

See Rule 53 (a) (1) and (a) (2) (E), Ala. R. App. P.;

Because the Alabama Court of Civil Appeals issued a "No Opinion" decision pursuant to Rule 53, the applicant must include in the Application for Rehearing a proposed statement of facts. The purpose of this requirement is similar to an objection made at the trial level – it brings to the

attention of the appellate court the applicant's understanding of the facts of the case and gives that court the opportunity, upon rehearing, to state or restate the facts. If the court of appeals denies the application or does not include the applicant's statement of facts in its opinion, the applicant has, by including its statement of facts in the application, preserved the facts for inclusion in its petition for a writ of certiorari, should one be filed.

This was properly done but never acknowledged by the Supreme Court in Alabama.

**Appellant's Exhibit A attached to this Petitioner's Application of Rehearing. This explains how the case cited by the Alabama Court of Civil Appeals is not relevant to this case and it also shows what was and was not cumulative to this case as improperly stated by the Trial Court.**

Green v. Ingram, 794 So. 2d 1070 (Ala. 2001);
Below is the Opinion Summary as it appears on the Internet

Opinions Released February 2, 2001

**Case # 1 Cited in the "No Opinion" Opinion #1992144**
**Alabama Supreme Court, February 2, 2001**
**Green v. Ingram, 794 So. 2d 1070 (Alabama 2001)**
**A Copy of the Referenced Case is Included**

***In the below cited case referenced in the Court of Appeals "No Opinion" opinion regarding "Green and Ingram", the facts of that case are in regular print.

***A comparison of the facts in this appeal are in BOLD print in an attempt to simplify this Court's understanding of the correct facts in this appeal (as compared to the cited facts in the "Green" case). Tidwell hopes that this will

assist the Court in making a more informed and proper ruling in this case.

*** The actual opinion, in its entirety, in the case "Green v. Ingram" is attached for this Court's information - See Exhibit B.

***For a differentiation between the case cited by the Court of Appeals and this appeal, please see Exhibit A. This gives a full and detailed comparison of both cases and hopefully it will assist the Courts in making a more informed and proper ruling.

***Also for a quick reference to relevant evidence in the Record (also shown in the Record at R. 204 - 217, please see Exhibit for the Court's convenience. Thank You.

This case R. is referenced by the Record. I think that I was supposed to use a C. but I'm not sure. I'm an involuntary Pro'se Litigant and forgot which one was correct. Forgive me.

The first case referenced by the Court of Civil Appeals in this appeal is Green v. Ingram, 794 So. 2d 1070 (Alabama 2001). Green filed a negligence action against Ingram's law firm, under the Alabama Legal Services Liability Act, §§ 6-5-570 to -581, Ala. Code 1975. The Appellant Tidwell in this case also filed a lawsuit against her former attorney's firm under the Alabama Legal Services Liability Act, §§ 6-5-570 to 581, Ala. Code 1975, as well as other miscellaneous statutes and Laws as noted in her complaint to include fraud, misrepresentation, and deceit (R. 5 through R. 28, R. 40 through 108).

In the case involving Green, Ingram answered, denying negligence and asserting a statute-of-limitations defense. In this case, the Appellee, "Ragsdale" did not deny negligence in the beginning (R. 21 #'s 75 and 77 and R. 16, 17, # 59) and Ragsdale gave Tidwell the contact information for his malpractice carrier in order for her to file a claim against his firm (R. 305 – 307). The Appellant

Tidwell was experiencing difficulties retaining adequate counsel (R. 305, 353 - 355) because she was informed that her legal issues would now be a monumental task to straighten out. The Appellee's firm had done little discovery and failed to contact key witnesses that supported her position (Appellant's Exhibit 8 a – o) (See R. 209 and 210 for the list of numerous references in the Record supporting this claim). Since years of delay had already occurred, no attorney wanted to take on the monumental task of attempting to straighten out the "legal mess" which had increased the level of difficulty of Tidwell's issues, barring her from recovery of entitled benefits and any future medical care for serious injuries (See R. 210 and 212 for the list of numerous references in the Record supporting this claim) (Also see Appellant's Exhibits #'s 46 and 47 – this shows one critical time when her medical care was an emergency but she was turned away and never got the medical treatment that she needed immediately). Later on Tidwell learned that another factor did pose some apprehensions other attorneys had if they were to represent her. One of the two attorneys in this "legal malpractice" action was on the Executive Committee at the Birmingham Bar Association and the Birmingham Bar Association had to decline Tidwell's request for help (R. 353 – 355). If Tidwell had known about this attorney's position of power, she would have asked that the evaluation of her case and the hearings be moved out of Birmingham. This was not discovered until after this appeal had been filed. The original Defendant's attorney successfully argued that "Ragsdale's firm" (the Appellee in this appeal) had failed to timely submit evidence before The Honorable Judge Thomas Woodall made his initial ruling (R. 321 – 331) (R. 250, 251, Plaintiff's Exhibit # 11, 66,) (Appellant's Exhibit # 35). The original Defendant's attorney does state in his post trial motion (Appellant's Exhibit # 35) and in an affidavit that he composed for this case (Appellant's Exhibit 44 – affidavit of Craig Alexander, attorney, and also included in this Exhibit is the Appellant's responses to the Appellee's objections to the Alexander's affidavit. This affidavit remains in evidence per Judge Boohaker "in the best interest of justice". This

same information can be located in R. 321 - 331). Mr. Alexander's affidavit can be located at many places in the Record, one of which is R. 278 - 283, in which he states that the untimely submitted evidence was of such quality that it definitely could have had an effect on the outcome of her worker's compensation case. In this rare circumstance, an attorney that was the opposing counsel in the "underlying case" voluntarily came forward and submitted an affidavit on Tidwell's behalf. This fact should signal the Court that justice had not been served. Other legal issues were left incomplete and this Appellee's firm even refused to inform Tidwell of what actions had or had not been taken in her cases while their firm was supposedly handling her issues (R. 206 and 213). The increased level of difficulty, the fact that this Appellant Tidwell had already paid out over $25,000 for her own medical needs, and the fact that she was 100% disabled and had lost all wages, Tidwell could not afford to compensate an attorney by the hour, after a retainer, especially since she was told that it was going to be a "monumental task" to complete or attempt to straighten out her legal issues (meaning many hours would have to be devoted to her issues and quite frankly, she did not have the financial means and most attorneys do not seem to have the time - their schedules are stressed as it is R. 305). Due to the above dilemma, Tidwell could not retain adequate counsel and the Alabama State Bar informed Tidwell that Ragsdale's firm had not withdrawn and they still represented her and they had to give her advice on the subject of her filing a claim against their own firm (R. 307). Even after the Appellee Ragsdale knew that the Appellant Tidwell was going to file a claim against his firm, he was still her attorney and he was required to give her legal advise on her claim against his firm (per the Alabama State Bar - R. 296, 307). He did so, instructed her how to file the claim (R. 296-297, and he did not withdraw for several weeks. What options and what retaliation (if any) were discussed between Ragsdale (the Appellee) and Tidwell (the Appellant/Petitioner) when he was still her attorney having to give her advice (per the Alabama State Bar) regarding the possible upcoming legal malpractice claim against his own firm (Also, note that Tidwell has

waived her rights to the attorney - client privilege in the "underlying case".) Ragsdale never advised Tidwell that there was any other remedy besides filing a claim against his firm, so if there was any other options available, Ragsdale failed to advise Tidwell, which would be another claim of malpractice (R. 305-307).

The Appellant Tidwell was unable to retain adequate counsel due to the reasons stated above and throughout the record. This situation has denied the Appellant Tidwell's rights to counsel and has forced her into an "involuntary pro'se litigant" position (R. 299, 305, See listing on R. 210). The Appellant Tidwell has openly admitted that she is intimidated and ignorant to proper procedure (See Motion of May 7th, 2002, R. 299, 348) . Due to this fact, she has asked the court for leniency and a suspension of the rules if she unintentionally omits or incorrectly interprets one of the rules of procedure (See Motion filed at the Court of Appeals dated May 7, 2002). The Appellee in this appeal Motioned the Court in an attempt to have her appeal dismissed for "Non-compliance" of the Rules but this Court denied their request. Tidwell is not just another pro'se litigant foolishly attempting to represent herself, she has no other choice and if she ever hopes to recover what was rightfully hers in the first place, she will have to struggle through the complicated maze of the legal system alone until the Courts finally listen and have a true account of events that have actually taken place (R. 299, 393 - See listing of relevant exhibits on R. 209). Only when the true facts are known, is it possible for the Courts to apply the correct interpretation, Rules, and Law, applicable to this case and appeal (Please see Plaintiff's Exhibit # 23 located in the Brief of the Appellant for the listing of Undisputed and Disputed Facts in this case, as well as, Appendix B, pages 1 through 29 and in the Brief of the Appellant, pages 11 through 13). Also please see the Proposed Statement of Facts that was submitted with the application for re-hearing. The allegations in Tidwell's complaint have merit (R. 5-26, 40-108) and there are many material facts that should be decided by a jury. Did Mr. Strickland advise Tidwell that her hearing was a disability determination only and that her witnesses and evidence regarding

causation were not important? Strickland claims that he did not tell Tidwell that - Question of Fact, not law, Brief of the Appellant page 5, Deposition of Ansel Strickland, page 21-24 - Please note that the excerpts from Mr. Strickland's deposition are provided in the Brief of the Appellant) (See Appellant's Exhibit # 5, 6) (R. 12 # 40, 41, 42, 212). Did Mr. Strickland cover up his error, denying Tidwell her rights make an informed decision regarding how to proceed on appeal? (R. 10 # 34) He claims he did not cover up his error, blaming opposing counsel? Tidwell claims that he did and she can prove it (R. 16, 17 Appellant's Exhibit # 47, R. 208-209, 212, 213) - Question of Fact, not law. Mr. Strickland stated in his Deposition that he interviewed witnesses that were Tidwell's co-workers at the time of her injury and that he contacted them prior to the hearing in December, 1998. Tidwell claims and has verified that he did not (R. 210-211, Appellant's Exhibits 8a through 8-0). Did he contact the critical witnesses or not? Question of Fact, not law. Tidwell claims that were several breaches in agreement (Deposition of Strickland, page 9, 13, 19, 25, 26, 27, R. 7 - 9 #'s 18, 19, 20, 21, 22, 24, 26, 27,) Were agreements breached or not? Question of Fact, not law. The credibility of one of the parties has been questioned - Which party is telling the truth - Question of Fact, to be decided by a finder of fact. Was Mr. Strickland a "worker's compensation specialist"? Tidwell claims that he was advertised to her as a "specialist" but Strickland will not give a straight answer to this question - Was he a "worker's comp specialist" or not? Question of fact, not law - Deposition of Ansel Strickland beginning at page 6). Did Strickland promise Tidwell that Judge Woodall would accept any evidence that he wanted to submit up to 60 days after he made his ruling? (R. 19 - 20) Question of Fact, not law. Did Mr. Ragsdale also cover up the error made by his younger associate or did he just neglect her case after he took it away and failed to discover that opposing counsel had her critical What evidence did Judge Woodall have before him when he made his initial ruling? R. 19. Strickland claims that he submitted certain evidence and Tidwell can prove that he did not - Question of Fact and it is for the finder of fact to determine which parties account

of events is correct. There are many other questions of fact but the above few examples should be sufficient to show this Court that many issues of material fact are to be decided by a finder of fact in this case and the Defendant was improperly granted their Motion of Summary Judgment based on the incorrect facts and interpretation of law and that many material facts are still remain. It seems to be impossible to have her case judged on the facts, events, and merits of her case because she is being denied the opportunity to have her day in court due to "technical rules and procedures" Brief of the Appellant, pages 1 through 2 . *The denial of this Appellant's rights due to "legal technicality or incorrect rules or procedures" has already been discussed. The United States Supreme Court does not allow technical rules to deprive pro'se litigants their day in court or their appeal. Our State and Federal Constitution is supposed to protect all citizens, even the average citizen in this situation. "We the People" is not just for those who can afford the best attorney. "We the People" is not just for those that can retain adequate counsel. "We the People" is not just for those who can twist the Law and cleverly attempt to escape liability which is rightfully owed to another, also known as "lawyered truth". "We the People" is not just for those represented by counsel when their repeated attempts to retain adequate counsel has failed, especially when their failures to retain adequate counsel did not involve their case lacking merit and other factors blocked their ability to be guided and represented by an attorney that has been educated on all of the Rules and Procedures. And "We the People" is not only for the litigants that can follow all of the Rules perfectly and flawlessly and as a prize in the end, their case can be judged on the merits of their case. In the case referenced (Green v. Ingram) in this Appellant's "No Opinion" opinion, Ingram moved for summary judgment. After conducting a hearing, the trial court entered a summary judgment for Ingram. Green appealed. In the appeal at hand, the Appellee "Ragsdale" moved for summary judgment and the trial court entered a summary judgment for Ragsdale. The Appellant in this case also

appealed (Tidwell) but that is where the similarity of these cases stop.

In the referenced case, Green alleged that Ingram had negligently handled his workers' compensation claim with regards to a settlement reached between Ingram and Green's employer. Green sought relief from the judgment, pursuant to *Rule 60(b)(1) or (6), Ala. R. Civ. P. In the case at hand, Tidwell was offered $45,000 (R. 21) by her former employer but her attorney advised her not to take the settlement and that he expected permanent long term disability as supported by her physician's statements (although he failed to timely submit these statements prior to the judge making his ruling) (R. 255 and Plaintiff's Exhibit # 8 and 9). He also advised that she could come out no worse at trial than $66,000 in compensation, reimbursement for past, present, and future medical care, which was quite substantial. Her attorney advised her that that was the minimum that she would receive but he expected amounts in damages to far exceed the minimum mentioned above because she was declared 100% disabled and had been hospitalized over 17 times for her injuries and by Law, she was owed her weekly compensation check and medical care for her injuries for the rest of her life. Tidwell was informed by her attorney that the original Defendant had accepted her injuries under the Worker's Compensation Act and that only the degree of her disability was an issue at the hearing. He advised her in the presence of witnesses that there was no need to present evidence regarding causation, witness testimonies regarding causation, supervisor's testimony that immediate notice was given to the original Defendant's management, etc. and the trial was being held on an emergency basis and the judge did not have the time to go over all of the evidence, nor would he have the time to hear all of her witnesses that could testify to causation Appellant's Exhibit # 5, 6). Tidwell's machine partner was also identically injured and he did receive his worker's compensation benefits but Judge Woodall never got to consider her partner also being injured because Tidwell's attorneys failed to contact this witness also. They repeatedly promised that they would

but they never did (R. 222-224, 240, 267-268, Appellant's Exhibit # 48) Tidwell's claims of legal malpractice against her former attorney is explained in detail in the Proposed Statement of Correct Facts submitted with this application of rehearing, as well as throughout the Record. The cited case involving "Green", may have been just a "mistake of Law" but this case involves an "undisclosed conflict of interest", neglect, deceit, breach of agreements, etc. and there is no other conclusion that can be reached by the Courts that legal malpractice did occur and the basis of this case, by Law, does not even require the testimony of an expert witness (however, there is evidence in the Record from persons that could be considered an "expert" opinion and their affidavits were properly submitted into the Record R. 321-331). As explained in the Statement of Correct Facts, Tidwell's former attorney's are guilty of seriously neglecting Tidwell's legal issues or they are guilty of deceit in covering up their firm's error R. 16 # 59, R. 17, R. 267. R/ 224. 243. 319. Tidwell's claims have been referenced and pointed out to the court and in an attempt to not repeat references to the record, I encourage this Court to go to the Record and they will see the substantial evidence supporting Tidwell's position. And by not informing Tidwell of what had occurred and that due to their firm's failure to timely submit the critical testimonies and evidence, the evidence that was so critical to their own legal strategy in the beginning of her case would be excluded and never considered by the Judge or the upper level courts on review. Both (neglect or deceit) constitutes legal malpractice by Law and neither of these situations requires the testimony of an expert witness (R. 219, 237, 245-247, 272-275, 313, 222, 317-318, 268, 269). As explained in Tidwell's appeal, the doctrine of res ipsa loquitor (Appellant's Exhibit # 60) does apply in this case. This is a valid argument supported by the Record and the facts in this case, as well as the Law in our State and the Law guiding the highest Court in the Land, The United States Supreme Court also supports Tidwell's position. In addition, there were also agreements breached by this Appellant's former attorney's firm (the Appellee) and that

**is an issue that also does not require an expert witness. You do what you promise to do or you don't, its just that simple, and another person's "paid" hypothesis is irrelevant.**

The Alabama Court of Civil Appeals cited Green v. Ingram, in their "No Opinion" notification in this appeal. **The Green appeal and this appeal differ for many reasons and the comparison of the Green appeal to this appeal shows that these cases differ greatly in fact and law and the same legal conclusion can not be drawn in Tidwell's appeal as it was in Green's appeal.** The portions of Rule 60 that the Court of Appeals specified in the Green v. Ingram case is as follows:

**Alabama Rules of Civil Procedure**

*Rule 60 (b) (1) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;

*Rule 60 (b) (6) any other reason justifying relief from the operation of the judgment.

**If the above had been an option in which the Appellant could have received relief, Ragsdale failed to instruct her of this possible remedy while he was still her attorney, which would also be a ground for a legal malpractice suit. Also, please note that this Appellant Tidwell was deceived by her own attorneys,** and unlike the "Green" case, this appeal does not involve a simple mistake or excusable neglect. This appeal deals with serious neglect or deceit or both (there can be no other theory except one of these), which involves an undisclosed conflict of interest. None of the above circumstances in this appeal require that the "Bought and Paid for Testimony" be submitted into evidence pre-trial (or even at trial). Also, the claims made by

the Petitioner in this Action do not; by our Law require any testimony of an expert witness. The "Green" case involved a simple mistake by Green's attorney and these two cases can not be compared because the critical facts and events involved in this appeal are so different.

In the referenced case (Green v. Ingram), the trial court entered an order granting Green's Rule 60(b) motion and setting aside the original judgment. **In this appeal, post trial motions in the "underlying case" were filed and Tidwell's attorneys attempted to enter the belated critical evidence and testimonies, however since their firm had failed to submit these critical documents and witnesses statements before the judge made his ruling, the original Defendant's attorney successfully argued that Tidwell's attorneys had the critical evidence at the time of trial but they had failed to timely file this evidence, therefore it could never be considered by the trial court or the upper level courts on review (Appellant's Exhibit # 35). Due to her attorney's failures to timely submit the critical evidence and testimonies (which is automatically assumed that any other lawyer would have submitted the evidence and testimonies supporting their client's position and to pay another person to state that is ridiculous - we are not stupid and common sense can be used in this case), all of Tidwell's post trial motions and appeals were denied. Tidwell had the right to be informed that the evidence would not be considered on appeal due to their offices failure to timely submit evidence. They covered up their error and filed appeals on other grounds, not exposing their failures as the reason that the post trial motions were denied. Her attorney blamed the adverse ruling on opposing counsel's pre-trial stipulation that both injuries were agreed upon as compensable and then Tidwell's attorney blamed opposing counsel for retracting that agreement after trial and that this caused her case to be lost because they did not address the issue of causation at trial and that the degree of her disability was supposedly the only issue that Judge Woodall was to decide. Tidwell heard several excuses of why her solid, well documented worker's compensation claim was lost. These excuses**

ranged from blaming opposing counsel to making comments about Judge Woodall's rulings stating "I don't know what's wrong with him lately". Opposing counsel was not to blame and all appeals had been exhausted. As shown and detailed below, opposing counsel was not to blame and opposing counsel and the original Defendant's attorney in the "underlying case" has come forward and submitted an affidavit on Tidwell's behalf in this action.

The judgment in the Green trial was set aside, the parties were allowed to conduct additional discovery. After receiving additional testimony, the trial court, entered a judgment finding Green permanently and totally disabled and awarding benefits accordingly. In this appeal, all Tidwell's post trial motions were denied due to the failure of her attorney to timely file the critical evidence and testimonies. Tidwell's former attorneys attempted to have the critical, omitted testimony and documents admitted but it was too late. The Judge denied the motions. Tidwell's former attorneys requested to make additional discovery attempting to seek permission to take a deposition of one of her physicians, enter numerous affidavits, submit additional medical evidence that stated that Tidwell's injuries were "solely job related", and to have the supervisor willing to testify on Tidwell's behalf that Tidwell was injured on his shift and that she had indeed received immediate notice of her injury (Appellant's Exhibits 8 a through 8 o, 38, 39, 40). Unlike in the Green case, Tidwell's request for additional discovery and testimony was denied because her attorneys had failed to timely submit the evidence. If Tidwell had been informed that it was her attorney's failures to submit evidence in a timely fashion, prior to Judge Woodall making his ruling, and not the "dirty trick" of opposing counsel, Tidwell would have had the opportunity to have their errors corrected. But Tidwell's attorney decided to hide this error (Strickland) and Mr. Ragsdale took over the case from his younger, former associate. Mr. Ragsdale either covered up this error also or there was serious neglect in the handling of Tidwell's claims because he should have discovered that due to his associate's failure to timely submit the critical

**evidence, that the original Defendant's attorney had the critical evidence excluded from all post trial motions and none of this evidence could be considered by the Upper Level Courts on review (. This substantial limited Tidwell's rights and she could not make an informed decision of how to proceed in her case. The blaming of opposing counsel for the adverse ruling led to a confrontation between the original Defendant's attorney and the opposing counsel in the underlying case. This is noted in the Record as well as in the affidavit that this opposing attorney has submitted in this case on Tidwell's behalf.**

In the Green appeal, Green's former employer appealed, arguing that the trial court erred in granting Green's Rule 60(b) motion and in setting aside the original judgment. The "mistake or error" by Green's attorney in the referenced case involved an honest mistake of Law, as quoted below:

"... Thus, the trial court granted Green's Rule 60(b) motion on the grounds of `mistake,' which is a ground encompassed within Rule 60(b)(1), Ala. R. Civ. P."

"... Green's mistake concerned whether the provisions of § 25-5-57(a)(3)(i), Ala. Code 1975, applied to his action. Green's injury occurred in 1991, before the May 19, 1992, effective date of § 25-5-57(a)(3)(i), Ala. Code 1975; thus, that section did not apply to Green's action for workmen's' compensation benefits. Green's lawyer erred in determining that § 25-5-57(a)(3)(i) applied to Green's action for benefits for his 1991 injury. Therefore, the mistake was a mistake of law. It is well settled that a mistake of law is not a ground for relief under Rule 60(b)(1)." 740 So. 2d at 412-13. (Citations omitted.)

On appeal in the Green case, the Court of Civil Appeals reversed the trial court's order granting the Rule 60(b) motion and instructed the trial court to vacate its March 1, 1999, order and to reinstate its December 15, 1995, judgment approving the parties' settlement agreement. **Unlike the Green case, all of Tidwell's post trial motions and appeals were denied and due to her attorneys failures to timely submit the critical documents, statements, witness testimonies, etc. which were excluded from being**

**considered and which were also a part of their own legal strategy to secure Tidwell's worker's compensation benefits for her which included life long much needed medical assistance and care.**

Green then filed a legal-malpractice action against Ingram, alleging specifically that Ingram had negligently advised him to settle the workers' compensation case for $10,000. **As explained above, Tidwell was advised to turn down a $45,000 settlement due to the reasons detailed above. This was one of the issues listed in Tidwell's complaint. But as will be shown, through serious neglect and/or deceit, Tidwell was left with nothing, no wages and no real medical care for the rest of her life. This has destroyed her and her family's life.**

Next, Green moved for a summary judgment on the issue of Ingram's liability, contending that the opinion of the Court of Civil Appeals in Wal-Mart Stores established negligence on the part of Ingram. Green relied upon this statement by the Court of Civil Appeals: "A mistake of law by a party's lawyer is not one of the extraordinary circumstances justifying relief under Rule 60(b) ...." Wal-Mart Stores, 740 So. 2d at 414. In his response to Green's motion, Ingram pointed out that the wording in the Court of Civil Appeals opinion suggested that a "mistake of law" had been made, not that Ingram, Green's attorney, had been negligent. **In the appeal involving this Appellant and Appellee, a simple mistake of law by Tidwell's former attorney is not what this case is about. As fully explained in the Proposed Statement of Facts, Tidwell's attorneys failed to submit the critical evidence and testimonies before Judge Woodall made his ruling. This was not a "mistake of Law" it was their failure to represent Tidwell and both deceit and neglect occurred during the course of these events. The original Defendant's attorney successfully argued that Tidwell's lawyers had this evidence at the time of trial but they had failed to submit it in a timely manner so that evidence was excluded from being considered by the trial court in post trial motions. The excluded critical evidence also could never be considered by the higher level courts on review but Tidwell was led to believe that it could be**

considered on appeal, when in fact, it could not. This appeal is not a case in which Tidwell's attorney misinterpreted a statute and made an honest mistake as it was in the Green appeal. In this Appeal, Tidwell's former attorneys failed to timely submit critical evidence and testimonies which was an error on their part to fulfill the elementary fundamentals of law and their responsibility as her attorneys, to properly prepare her case for trial in order to secure Tidwell the Worker's Compensation Benefits and medical care that she was rightfully entitled to in the first place. AS EXPLAINED, THIS WAS NOT A SIMPLE "MISTAKE" IN INTERPRETING A STATUE OR LAW. And as fully explained in the Proposed Statement of the Correct Facts (as well as shown throughout the Record), her attorney through EITHER SERIOUS NEGLECT OR DECEIT did not disclose to Tidwell that the original Defendant had successfully argued that the evidence that her attorneys had failed to timely submit would never be considered. This constitutes an "undisclosed conflict of interest", fraud, and misrepresentation, and Tidwell only learned that it was her attorney's failures and not the original Defendant's attorney's dirty trick (as she was led to believe) that had caused the adverse ruling in her case, and the denial of all of her post trial motions and appeals. Tidwell did not discover that it was her attorney's failures that had caused the adverse ruling until after all appeals were exhausted and she had confronted the original defendant's attorney (Mr. Alexander) wanting to know how he could live with himself by using dishonest and unethical tactics to deny the disabled their entitled benefits. Mr. Alexander informed Tidwell that he never entered into a stipulation with her attorney that conceded that both injuries were accepted and that her hearing was a disability determination only. The original defendant and Tidwell's former employer was even denying notice of her injury and the supervisor's testimony confirming that Tidwell had been injured on his shift and that she had indeed immediately reported this to him was never heard or considered by the trial court or the higher level courts on review because Tidwell's attorneys repeatedly promised to contact this witness (as well as many others)

**but again, they failed to do so. This supervisor was subpoenaed to and present to testify on Tidwell's behalf at her post trial motion of reconsideration but the original defendant's attorney successfully argued that Tidwell's attorneys had this witness at the time of trial and that they had failed to submit this critical testimony (notice of injury) before Judge Woodall made his ruling. Due to Tidwell's attorneys failures, Judge Woodall denied the motion and the testimony of Tidwell's supervisor and the critical notice of injury was excluded from the Record. Just for the Record, the original Defendant's (BellSouth) attorney (Mr. Craig Alexander) has come forward, composed a two page affidavit himself, and his affidavit is a part of the Designated Record on Appeal in this case. This should signal the Courts that substantial injustice has occurred. How many opposing attorney's would voluntary come forward and submit a two page affidavit supporting the Plaintiff's/Appellant /Petitioner's position? The original defendant's attorney is also qualified to provide any expert witness testimony, he knows this case first hand (and his affidavit is in the Record). But even though there is an abundance of evidence, affidavits (from persons that do qualify as an expert opinion), and documents already in the in Record which shows that there was an "undisclosed conflict of interest" where this firm puts their interest before their client, where serious neglect is shown, where breaches of agreements are shown, and in cases of deceit, the Law does not require expert witness testimony. Tidwell contends that she does have evidence in the Record that satisfies the "expert witness" opinion, even though the Law in her case does not require her to provide it.** ***THIS IS ANOTHER EXAMPLE OF HOW THE FACTS IN THE "GREEN" APPEAL CANNOT BE COMPARED WITH THE FACTS, INTERPERTATION, AND LAW THAT SHOULD BE APPLIED IN THIS CASE.***

In the Ingram appeal, it is also pointed out that the law required Green to show that Ingram had deviated from the standard of care set out in § 6-5-580, Ala. Code 1975, and he argued that Green had failed to present expert testimony or

any other evidence to show that Ingram had deviated from the applicable standard of care. See Tonsmeire v. AmSouth Bank, 659 So. 2d 601 (Ala. 1995). **As fully explained above and below, Tidwell contends that she does have evidence in the Record that satisfies the "expert witness" opinion, even though the Law in her case does not require her to provide it. Also see Exhibit C for a detailed comparison between the second case cited by the Court of Appeals in their "No Opinion" Opinion ("Tonsmeire v. AmSouth Bank, 659 So. 2d 601 (Ala. 1995)") and this appeal.**

In the Green appeal, Green's attorney, Ingram contended that he had not breached the applicable standard of care and that, in any case, Green's claim was barred by the applicable statute of limitations. Ingram filed an affidavit stating that in handling Green's workers' compensation claim he had "met that degree of care and skill and diligence which other similar[ly] situated legal service providers in the same general line of their practice and the same general area have and exercise in the like case." Ingram also filed the affidavit of another attorney, one who had specialized in the practice of workers' compensation law for 17 years. That attorney stated that he had conducted an extensive review of the records pertinent to the settlement of Green's workers' compensation claim and that in his opinion "Green received a fair settlement based upon the medical records, vocational reports and other pertinent records available at the time of settlement." **In this appeal, there was no settlement and Tidwell now has to live with no wages or medical care due to her attorney's failure to timely submit evidence. This is a "punishment" that does not seem to fit the "crime" – It is important for everyone to keep in mind that Tidwell's "crime" was that she was severely injured on her job while trying to help support her family in the State of Alabama and had to hire an attorney to claim what was rightfully hers in the first place. Yes, this Appellee did have another attorney's affidavit that stated that he had reviewed the case at hand, but Tidwell objected to his affidavit because it was insufficient and he did not evaluate this Appellee's "standard of care" at the level of a "specialist". When this**

Appellant interviewed this Appellee, this Appellant was promised that the "worker's compensation" portion of the trial would be handled by a "worker's compensation specialist", and not a general practitioner. Therefore, the Appellee's affidavit is insufficient. In Tidwell's Notice of Appeal (R. 390) it states "Tidwell contends that the Defendant's/Appellee's expert witness's evaluation many or may not be valid because he does not state at which level of care he reviewed the "underlying case". Another factor, is that Tidwell did not have the funds to deposition another person in this case at that time. She (being an involuntary pro'se litigant) believed that she would have the opportunity to cross examine this witness at trial (*see Laws in Attachment ___ that clearly state that a pro'se litigant's case can not be disposed of due to "legal technicality." There is substantial, undebatable evidence of neglect and deceit, and the Appellant is entitled to ask this expert questions at trial such as "Would most attorneys present evidence from the physicians that states that the employee's injuries were "solely job related" or submit a letter from another physician that states that "Tidwell is being treated for work related injuries in my clinic?" "Would most attorneys (at the "specialist level") call the supervisor that received immediate notice of an injury, even having to assist the Plaintiff up after the accident, if the opposing party was claiming that they did not receive notice and the injury did not occur?" "Would most attorney enter evidence from co-workers that showed that Tidwell could perform her job before the October 30th accident but she was unable to perform these duties after the accident?" "Would most attorneys submit statements into evidence that the company chosen physician stated that Tidwell's injuries were from the October 30 accident, not from any pre-existing condition, nor was it from any other accident?" Is it reasonable to believe that The Honorable, Respected, now Supreme Court Justice Thomas Woodall had this evidence before him and he chose to ignore it? No - This is elementary and we all know the answers to these questions. It is an insult to the Appellant and the Courts for this Appellee to claim that that these questions would not be important. It is also a

**constitutional deprivation for this Appellant to only allow this Appellee's expert witness (which reviewed the case at the incorrect level of care) cross examination be done in a deposition paid for by the Appellant. This is "justice for sale" and is clearly not allowed by our Law. "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay. By due process of Law, this Appellant is entitled to cross examine this witness at trial. She is not required to "buy" this opportunity prior to trial. If after the cross examination the Appellee's expert, the Judge determined that it was not important to have the notice of injury, supervisor's testimony, statements from physicians stating that her injuries were solely job related, not caused from any pre-existing condition, nor was it caused from any other accident, then the Judge can issue Judgment as a Matter of Law. As has already been shown, a mandatory expert witness is not required by Law in this appeal (due to breaches in agreements, neglect, deceit, an undisclosed conflict of interest, etc.), and it is debatable whether or not this Appellee's expert evaluated this case at the appropriate "level of care". But even if an expert opinion was mandatory, (which it is not), it is unconstitutional to have the Appellant "purchase" the rebuttal to his affidavit prior to trial.**

In this appeal, the Alabama Court of Civil Appeals cites **"Green v. Ingram, 794 So. 2d 1070 (Alabama 2001)"**, as a similar case to this appeal. This was the basis of the Court of Civil Appeals affirming this Defendant/Appellee's Motion of Summary Judgment. **The cited case** (Green v. Ingram) **and this appeal (Tidwell v. Ragsdale) are nothing alike and many critical factors differ.** The differences asserted in this application of rehearing, Tidwell's prior appeal, and in the Record (prior to appeal) entitle Tidwell to have her grievances fully and properly addressed by a finder of fact. Tidwell is entitled to this due process by Law and the Constitution of Alabama and the United States of America

affords her that right. Numerous major differences have already been shown but another major difference between these cases can be can be shown with the Record on Appeal in this appeal verses the Record in the case cited by the Court of Appeals (Green v. Ingram). In Green v. Ingram, the upper level Courts point out that Green refers to affidavits and several attachments that were not a part of the record, therefore, those affidavits and documents could not be considered on appeal:

"Green filed a response in opposition to Ingram's summary-judgment motion. In that response, Green stated that he was attaching the affidavit of an attorney who expressed the opinion that the legal services Ingram had provided Green fell below the applicable standard of care, skill, and diligence. However, that affidavit is not contained in either the record or the supplemental record. In fact, Green's response in opposition to Ingram's summary-judgment motion refers to several attachments (affidavits and letters) that are not contained in the record; we cannot ascertain from the record whether these attachments were before the trial court. This Court's appellate review is restricted to the record on appeal, and it cannot consider any evidence or contention that is not supported by the record. Etherton v. City of Homewood, 700 So. 2d 1374 (Ala. 1997); King v. Garrett, 613 So. 2d 1283 (Ala. 1993)."

***This is another example of how the Green case and this appeal vary tremendously.*** As shown in the quote above, Green claimed to have evidence in the record opposing Ingram's summary judgment motion (affidavits, letters, and various attachments), however, the Upper Level Courts on review noted that there was no such evidence contained in the Record and therefore, it could not consider any evidence or contention that was not raised before the trial Court nor would it consider any evidence or contention in Green's appeal that was not supported by evidence in the Record. Unlike the Green appeal, **the Record in this appeal contains many issues brought before the trial court and the**

evidence supporting this Appellant's (Tidwell's) contentions in the Record is not just substantial, it is OVERWHELMING. This evidence was included in THIS RECORD, before the trial court and an appeal (unlike in the "Green" case) and a detailed index of each piece of evidence transmitted under separate container by the Appellate Court Clerk in Birmingham, Alabama was provided. In addition, the Appellant had many of the exhibits duplicated and assembled in order for each Judge to have easy access to the substantial evidence in the Record that supported her claims. The evidence from the Record that was of particular importance in this appeal was mailed to the Court of Appeals when the Appellant submitted her brief. It is critical for this Court to go to the Record and review the evidence in this case, which includes the Designated Record on Appeal, Binders of Evidence shipped under separate container, and the detailed index with evidence provided to this Court when the Appellant's brief was submitted to the Alabama Court of Appeals. The SUBSTANTIAL, OVERWHELMING evidence includes but is not limited to Affidavits regarding this Appellant's pre-trial instructions and post trial promises of this Appellee (Appellant's Exhibit #'s 6, 7). Numerous Affidavits and testimonies that were a critical part of their firm's legal strategy to secure Tidwell's worker's compensation benefits – however, they failed to timely submit this evidence prior to The Honorable Judge Woodall made his ruling. A few of these critical testimonies include but are not limited to Appellant's Exhibit # 8-a-1-2, which shows that this Appellee belatedly attempted to enter the testimony of her supervisor on duty when she was injured. The original Defendant was claiming that they did not receive notice of the injury and Tidwell's supervisor was willing to testify on Tidwell's behalf that she was injured on his shift and he did indeed receive immediate notice of her injury, however, the Appellant's former attorney (and the Appellee in this appeal) failed to contact this witness prior to Judge Woodall making his ruling. The Appellant's supervisor was subpoenaed after the adverse ruling but before the

Motion of Reconsideration in the "underlying case". The proof that Tidwell was injured and that she had immediately reported this to her supervisor was excluded because the original Defendant's attorney successfully argued that this and other critical evidence was available to Tidwell's attorneys prior to the Judge's ruling and since they had failed to timely submit the evidence that it could not be considered by Judge Woodall or the Upper Level Courts on appeal. Tidwell was only told that Judge Woodall did not have the time to hear her supervisors testimony. Sworn testimony from this supervisor is located in the Record as 8 a-1, 8 a-2, 8 b, 27-a, 27-b, also see excerpts from Tidwell's supervisors sworn testimony in a subsequent retaliatory discharge trial (Appellant's Exhibit # 28). Please do not be mislead into thinking that this sworn testimony was the result of Tidwell's former attorney's action in the handling of her case. This testimony was only gathered after the adverse ruling and this Appellee had withdrawn. The Appellee in this case never contacted this witness and therefore, proof of injury and notice of that injury was excluded. This was a critical part of this Appellee's legal strategy to secure her benefits but their legal strategy was abandon just before trial. (See Appellant's Exhibits 6 and 7). Just as with so many other witnesses, the Appellee never contacted this witness. This testimony was only given after Tidwell's attorneys withdrew and another person put forth the effort to gather his testimony. The testimony was not gather from any efforts of Tidwell's former attorneys, who are the Appellee in this case.

Also, in Appellant's Exhibit # 8 – c and 8 - d, there is an affidavit from Ms. Kim Cutcliffe. Ms. Cutcliffe was Dr. Gibson's office manager. The were a couple of statements used against the Appellant at trial in the underlying case. These were unintentional errors made by Dr. Gibson (a company appointed physician) in his deposition. Ms. Cutcliffe came forward on Tidwell's behalf and was willing to testify at Tidwell's worker's compensation hearing. Ms. Cutcliffe was the office manager for Dr. Gibson and had just hired new personnel to complete the medical charts. Due to her staff's error (the chart was not

up to date at the time of Dr. Gibson's deposition), Dr. Gibson unintentional made a few comments that were used against Tidwell that were untrue. Tidwell's attorney (and the Appellee) knew about the conflicting statements and that Dr. Gibson's Office Manager came forward to offer testimony on Tidwell's behalf. Tidwell's former attorneys never contacted this witness but after the adverse ruling, they did attempt to have her affidavit on Tidwell's behalf entered, but again, it was never considered because the original Defendant's attorney successfully argued that Tidwell's attorney's had this evidence at the time of the worker's compensation hearing but they had failed to submit it before the Judge made his ruling. One other key piece of evidence excluded due to Tidwell's attorneys errors.

In addition to this evidence in the Record (unlike the "Green" appeal), other numerous testimonies and affidavits were gathered and submitted prior to the Motion of Reconsideration, Alter, and Amend in the "underlying case". These critical testimonies are shown in the Record, as well as in the booklet of evidence that was submitted with this Appeal. These testimonies included but are not limited to family members statements regarding Tidwell's condition before and after the accident on October 30, 1995 (Appellant's Exhibit #s 8'f, 8'h, 8-j. Many of these affidavits were from co-workers that note that Tidwell was able to perform her job duties before the accident but she was not able to perform her job duties after the October 30, 1995 accident. One co-worker's testimony even stated that immediately after the accident that Tidwell "was hurting and scared because she knew that something was seriously wrong with her back (Appellant's Exhibit 8-G). Other affidavits and testimonies from the Appellant's co-workers can be found in Appellant's Exhibit #'s 8-I, the affidavit of Cindi Tuggle, as well as excerpts from her sworn testimony from a subsequent trial. Other co-worker's affidavits can be found in Appellant's Exhibit #'s 8-k, 8-l, and 8-m-1. Also note in Appellant's Exhibit 8-n is the sworn testimony from another one of Tidwell's co-works in a subsequent

trial. None of the witnesses were contacted by Tidwell's former attorneys (which is the Appellee in this case), except for Cathy King. On Appellant's Exhibit # 8 – e you will see the "Notice of Filing Affidavits" submitted by this Appellant's former attorney and Appellee in this appeal. Listed are seven different affidavits submitted by this Appellee on April 16th, 1999, which was weeks after the adverse ruling in the "underlying case". The Appellee's firm states in this Notice "Wherefore, plaintiff respectfully prays this court accept the affidavits as evidence in this cause and in support of the plaintiff's motion to amend and alter." These affidavits were also a critical part of this Appellee's original legal strategy but once again, the numerous critical testimonies supporting Tidwell's (this Appellant's position) was excluded from ever being considered because the original defendant's attorney successfully argued that Tidwell's attorneys had this evidence at the time of trial but they had failed to submit it before the Judge made his ruling. Please do not be mislead into believing that the subsequent sworn testimonies by the Appellant's co-workers was in any way the result of this Appellee's handling of her claim. These testimonies were given in a retaliatory discharge trial after these attorneys had withdrawn. Tidwell's former attorneys and the Appellee in this case never contacted or spoke to these witnesses. Also, please note that in other co-worker's affidavits and testimonies, it is stated that Mr. Paul Stevens was also seriously injured while performing Tidwell's job duties. Mr. Stevens was Tidwell's machine replacement while she was out with back surgery. Upon her return to work, Mr. Stevens was also out with back surgery (Tidwell and Stevens both ruptured the same disc in their lumbar spines, at the same machines, performing the same job duties). Mr. Stevens did receive his worker's compensation benefits, which included all future medical care and Tidwell did not. This more than satisfies the "similar injury rule" used to determine the legal outcome of a "similar case". Tidwell's attorney knew of this witness and had planned to contact him, however, they never got around to it. In the original defendant's opposing counsel's affidavit (submitted in this case – See

Appellant's Exhibit # 44, R. 321-331), Mr. Alexander does states that he handled both the Stevens worker's compensation case and the Tidwell worker's compensation case and he does acknowledge that Stevens, Tidwell's replacement did receive his benefits and Tidwell did not.

Also, please note that the Appellant's Exhibits have been assembled in a format that will guide the Court of Appeals or the Alabama Supreme Court (whichever may apply), informing them of the correct facts, back by the substantial evidence in this case, in order for the correct interpretation and Law can be applied to the correct facts in this appeal. This booklet also points out specifically which evidence was and was not cumulative to the Record - See Appendix B in the Brief of the Appellant, as well as the evidence in the booklet submitted with this appeal, and the Record itself. A list of references in the Record is in Exhibit attached to this motion. There you can see how each claim that Tidwell asserts is backed by evidence in the Record. This is an easier format than attempting to put every reference behind each sentence - I encourage you to please view the evidence where my appeal can be judged on the correct facts. These two detailed accountings, as well as the Record, clearly shows that the trial court was in error when it determined that there was no evidence omitted that was not already cumulative to the Record. This is not correct and the evidence booklet and Appendix B shows that there is substantial evidence that Tidwell's attorneys failed to enter that was NOT CUMLATIVE to the Record. Unlike the "Green" case cited by the Court of Appeals, this Appellant can show many testimonies and documents that overwhelmingly support her complaint. In addition to the above noted testimony, the Appellant's Exhibit # 26-a shows the inventory of evidence submitted to the Honorable Judge Thomas Woodall at trial and what evidence that Tidwell's attorney had submitted post trial before Judge Woodall made his ruling. Then in the Appellant's Exhibit # 26-c shows the inventory of evidence that was submitted included post trial submissions but before the Honorable Judge Woodall made his ruling. There is a total accounting of each piece of evidence that was

submitted and omitted located in APPENDIX B, included in the Brief of the Appellant. This factual accounting of evidence shows that Judge Woodall's Order does not mention the evidence that Strickland claims to have submitted post trial. The index of evidence submitted in 26-c also supports Tidwell's claim that Strickland failed to enter this evidence. These facts give support to Tidwell's claims that Judge Woodall did not have the evidence before he made his ruling. Is it reasonable to believe that Judge Woodall reviewed evidence stating that Tidwell's injuries were "solely job related", the damage occurred in the October 30, 1995 accident and not from any other accident, nor was it from any pre-existing condition, or statements that stated that "Tidwell was being treated for injuries that she had received on the job". Or a 2 page physician statement that begins "Caren Tidwell is my patient and she has multiple injuries that are solely job related"? These are just a few of the statements from three different physicians. Is it reasonable to believe that Judge Woodall would have just ignored this critical evidence? Or is it more reasonable to believe that Strickland did not submit this critical evidence and that is why this evidence is not noted on the listing of evidence retained by Judge Woodall's clerk and that is also why Judge Woodall did not mention any of this critical evidence in his order? I think that everyone knows the answer to this question and it is an insult to this Appellant and the Courts for this Appellee to claim that The Honorable Judge Woodall would have just ignored this evidence. In addition to the numerous affidavits and testimonies that were excluded and discussed above, a sampling of other evidence excluded includes but is not limited to Appellant's Exhibit #'s 8, 27, 28, 38-a through 38-b, 39, 40, and 44. Also note that in a conference with the Honorable Judge Boohaker during the course of this case, Judge Boohaker asked this Appellee's counsel if the 2 page letter composed by Dr. Anne Mason, which clearly stated that "Tidwell had multiple injuries that were solely job related" was before Judge Woodall before or at the time of his ruling. The Appellee's counsel in this case assured Judge

Boohaker that their client (The Alias "The Law Offices of Clay Ragsdale") had submitted this specific piece of critical evidence before Judge Woodall made his ruling and they also informed Judge Boohaker that this specific piece of evidence was submitted with Tidwell's former attorney's post trial brief. This was not true. Tidwell's former attorneys attempted to belatedly enter this into evidence only after the adverse ruling. By then, the original Defendant's attorney successfully argued that Tidwell's attorneys had this evidence at the time of trial and they had failed to timely enter it into evidence, so it had to be excluded. The Trial Court erred when it took the Appellee's word over the word of the Appellant regarding whether this specific piece of evidence was before Judge Woodall before he made his ruling. The Appellee claims that it was submitted and was mentioned in Tidwell's former attorney's post trial brief. It was not submitted, nor is Dr. Mason mentioned anywhere in the Appellee's post trial brief, which is in direct conflict to what they told Judge Boohaker in a conference.

***Independent Steave Corp. v. Bell, Richardson & Sparkman, P.A., 678 So. 2d 770 (Ala. 1996);***

This case cited also has nothing to do with legal malpractice involving deceit or any expert witness testimony. It is about a bankruptcy in which the attorney failed to timely file their claim. The Alabama Supreme Court ruled that there was no evidence in the record that the outcome of the case would have been different (did not mention expert witness testimony) because this Plaintiff would not have been in position to recover any of its claim even if proof been filed in a timely fashion by the defendants. Then this case argues attorney's fees.

***Pryor v. Brown & Root USA, Inc., 674 So. 2d 45 (1995);***

Here again, this case has nothing to do with legal malpractice and it is about whether or not an employee's

accident occurred in the "line of duty". I don't know what the Alabama Court of Civil Appeals was trying to compare with the appeal at hand.

***Tonsmeire v. Amsouth Bank, 659 So. 2d 601 (Ala. 1995);***

In the Application of Rehearing and relied on in the trial court's opinion is the Tonsmeire v. Amsouth Bank case. In the Application for Rehearing, Appellant's Exhibit C is a 10 page comparison between this cited case and the case at hand. Basically, the above cited case was about a Plaintiff that sued his attorney after receiving his trust liquidation. Tonsmeire even knew of the actions of the trust administrator and even signed a "Release and Discharge" agreement, which the Courts held binding in this case. In comparison to the appeal at hand, first, this Petitioner was deceived by her attorney (which does not require any expert witness testimony. The attorney in the appeal at hand had an undisclosed conflict of interest, fraud, etc. see complaint which is nothing like the Tonsmeire case where the Plaintiff in that case got his liquidated assets, knew of his attorney's actions, and signed an agreement form. The Petitioner never signed an agreement, she was lied to and deceived by her own attorney, and she never recovered any of her entitled benefits and she has lost all medical care for serious injuries for the rest of her life. This comparison also explains that Tidwell's expert witness' mother tragically died, she requested a continuance (denied by the trial court), she asked to select another expert (denied by the trial court), so then the opposing counsel in the underlying case came forward and provided her with a 2 page affidavit in support of her position. He only did this because a manifestly unjust adverse result had occurred and it was not in the best interest of justice. This with the other substantial evidence in the record fulfilled the expert witness requirement (denied by the trial court). Also, in cases of deceit, obvious neglect, neglect that qualifies for the Doctrine of Res Ipsa Loquitor, breach of contract, and an undisclosed conflict of interest do not by law require the testimony of any expert witness.

The Tonsmeire case, even after the client's agreement and approval, he failed to present any evidence, expert or otherwise. This certainly is not the case in the appeal at hand where substantial evidence was submitted into evidence during the course of these proceedings. Also mentioned in this Petitioner's argument is the fact that the "but for" or "in a like case" standard is automatically satisfied by this Petitioner's machine partner was also identically injured and he did receive his benefits. In this rare instance, facts can be substituted for an educated guess or theory of an expert witness.

Tidwell also argued that it was against the legal precedent to disqualify a Pro'se Litigant on a Legal Technicality. The Courts ignored the legal precedent set by the U.S. Supreme Court as well as violating Tidwell's Fourteenth Amendment Rights by awarding her machine partner his benefits and denying her her benefits on the basis of a "legal technicality". This Petitioner would also like to point out that there was NO EVIDENCE in the Record in this comparison case and in the other comparison case "Green (above" used by the Alabama Court of Civil Appeals to uphold the trial courts improper, unjust, and unlawfully ruling granting this Deceitful Defendant their Motion of Summary Judgment.

The Tonsmeire case and the Petitioner Tidwell's case can not be compared and a detailed comparison such as in the Green case is provided in the Application of Rehearing.

***Wilma Corp. v. Fleming Foods of Alabama, Inc., 613 So. 2d 359 (Ala. 1993);***

This case cited also has nothing to do with a legal malpractice case. It is about tenants and leasing land. It appears from the case, which is not relevant to this appeal, that the purpose for this case being cited is that "The nonmovant must establish the existence of a genuine issue of material fact by presenting substantial evidence. Ala. Code 1975, Statute 12-21-12; Bass v. SouthTrust Bank of Baldwin

County, supra. "Substantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of fact sought to be proved." (*362) West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871, (Ala. 1989). Our review is further subject to the caveat that this Court must review the record in a light most favorable to the nonmovant and must resolve all reasonable doubts against the movant. Harrell v. Reynolds Metals Co., 495 So. 2d 1381, 1383 (Ala. 1986); (**7) Wilson v. Brown, 496 So. 2d 756, 758 (Alabama 1986)."

West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870 (Ala. 1989); As shown above in **Wilma Corp. v. Fleming Foods of Alabama** "Substantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of fact sought to be proved." (*362) West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871, (Ala. 1989). Here again these cases have nothing to do with legal malpractice and the above definition is the only relevance that could be applied to this appeal at hand.

Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794 (Ala. 1989);

This is not a case that is about a legal malpractice case. It does state that "When the movant makes a prima facie showing that there is no genuine issue of material fact, the burden shifts to the nonmovant to present substantial evidence creating such an issue."

Bussey v. John Deere Co., 531 So. 2d 860 (Ala. 1988)
Appellant Q from this Petitioner's Application of Rehearing.

The Bussey case deals again with another subject and not legal malpractice. It deals with summary judgment and substantial evidence. In this Exhibit, this Petitioner list "substantial evidence" that is in the designated record on appeal with references to where each is found in the record. Also in May 8th, 2002, This Petitioner Tidwell again applies for a suspension of the Rules and Exhibit 3 b list the detailed index of evidence used prior to the ruling of the trial court, evidence attached to the Plaintiff's Post trial Motion, and a listing of overwhelming substantial evidence in her favor. The evidence is referenced to the Record in Exhibit 3 a pages 1 - 24 and Exhibit 3 b, page 1 - 38. After reviewing these indexes of evidence in the Record, there is no question that there is substantial evidence in the Record in the Petitioner's Favor.

Also, this Petitioner Tidwell filed a Record on Appeal with Indexes. Exhibit 3 (b) details what evidence was and was not cumulative to the record (trial court was in error to state in its order that this evidence was cumulative to the Record, when it clearly was not and as Mr. Alexander states that critical evidence was excluded that could have had an effect on the outcome of the trial due to Tidwell's attorney's failures (See Post Trial Motion of Craig Alexander in underlying case).

.....

(iii) any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry;

Appendix C

August 30, 2002

State of Alabama — Judicial Department
The Court of Civil Appeals
Special Term, 2002

BBB

2010679

Caren Tidwell
v.
The Alias "The Law Offices of Clay Ragsdale"

Appeal from Jefferson Circuit Court (CV-00-7410)

YATES, Presiding Judge

AFFIRMED. NO OPINION.

See Rule 53 (a) (1) and (a) (2) (E), Ala. R. App. P.; Green v. Ingram, 794 So. 2d 1070 (Ala. 2001); Independent Steave Corp. v. Bell, Richardson & Sparkman, P.A., 678 So. 2d 770 (Ala. 1996); Pryor v. Brown & Root USA, Inc., 674 So. 2d 45 (1995); Tonsmeire v. Amsouth Bank, 659 So. 2d 601 (Ala. 1995); Wilma Corp. v. Fleming Foods of Alabama, Inc., 613 So. 2d 359 (Ala. 1993); West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870 (Ala. 1989); Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794 (Ala. 1989); and Bussey v. John Deere Co., 531 So. 2d 860 (Ala. 1988)

This case was transferred to this court by the Supreme Court, Pursuant to Statute 12-2-7- (6), Ala. Code 1975.

Thompson and Pittman, JJ. Concur.

John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said court

Witness my hand this 30th day of August, 2002

Signed by John Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama
Court of Civil Appeals

CCC

300 Dexter Avenue
Montgomery Alabama 36104-3741
(334) 242-4095

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Appendix D

Application for Rehearing with Proposed Statement of Facts Properly Included mailed on September 13, 2002.

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Appendix E

Denial of Rehearing. No Opinion

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Appendix F

Application of Rehearing Overruled. No Opinion.

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(iv) The judgment sought to be reviewed if the date of its entry is different from the date of the opinion or order required in sub subparagraph (i) of this subparagraph;

The Defendant's/Respondent's Motion of Summary Judgment was entered by the Court Clerk on December 20, 2001.

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Appendix J (See FRAP 14 (i)
**STATEMENT OF THE CASE**

***When the portions of the record relied on under the subparagraph are voluminous, they shall be included in the***

DDD

*appendix referred to in subparagraph 1 (I). Since there are so many facts in this case that began in 1996, the Statement of the Case had to be put in the Appendix in order to inform this Court of the actual facts and events that has occurred in this case.*

***The facts stated below are located several places in the Record. Most of the facts referenced below are found in the Black Binders shipped under separate container by the Appellate Clerk in Jefferson County Alabama. The exhibits noted below are a part of the Designated Record on Appeal in this Court's possession, and can be considered by this Court. These documents appear in other places in the Record but in an attempt to simplify this Court's review of the evidence, most of the references below can be located in the Black Binders, referenced as Plaintiff's Exhibit # or the Booklet of Reproduced Evidence that was submitted with each copy of the Appellant's Brief - These Exhibits are referenced by Appellant's Exhibit #. The Appellant's and Plaintiff's Exhibits are also all located in the Black Binder and these Exhibits, whether it be the Appellant's Exhibit or the Plaintiff's Exhibit, can be found under the same Exhibit #.**

**Proposed Statement of Facts**

**On September 18, 1996, the alias "The Law Offices of Clay Ragsdale" filed a complaint on the behalf of Caren Tidwell ("Plaintiff") against the Defendant, BellSouth Telecommunications regarding the denial of her entitled work benefits, which included, among other things a claim of Worker's Compensation and a retaliatory discharge claim.** (Appellant's Exhibit # 1). The worker's compensation portion of this case went to trial on December 9th of 1998 before the Honorable Judge Thomas A. Woodall (Appellant's Exhibit # 31). **Tidwell was instructed by her attorney that this Defendant had already acknowledged that her worker's compensation hearing was a "disability determination" only and that it was not necessary to present evidence and witness testimony regarding**

causation (Appellant's Exhibit # 5, 6, are affidavits from witnesses who heard the Petitioner's receiving these information and these instructions from her former attorney and the Respondent). Due to fact that the hearing was only in regards to the degree of Tidwell's disability, her attorney (Mr. Strickland) did not take evidence to Court to rebut the Defendant's position nor did he call the numerous ex-co-workers (including supervisors) to establish that an injury had indeed occurred and that Tidwell had given timely notice to both injuries (Appellant's Exhibit #'s 5, 6, Also please see numerous sworn testimony and affidavits that were excluded 8a through 8o - all witness that had information about the Petitioner's injuries but were never contact by the Petitioner's former attorney before the adverse ruling). Tidwell and her former attorney had an agreement and it was promised (as well as part of her former attorney's own strategy) that he would submit specific evidence that he had advised her was critical to be entered to support her claims for her worker's compensation benefits***. Tidwell's attorney repeatedly promised Tidwell that he would prepare this evidence supporting her claims before trial (then on the day of the trial, he (Strickland, Tidwell's former attorney) stated that it was not necessary to enter the evidence to support her claims because her employer had already agreed that her injuries (one in January and one in October) were compensable under the Worker's Compensation Act (Appellant's Exhibit #'s 5, 6). Strickland's pre-trial instructions and promises was witnessed by more than one witness in addition to Tidwell and they signed affidavits in 1999 and gave their account of the events surrounding what had occurred just before and immediately following the hearing (See the three Affidavits in Appellant's Exhibit #'s 5, 6, & 7). Tidwell's attorney went to court without rebuttal evidence or evidence that was available to him regarding the causation of her injuries, which included supervisor's testimony regarding the physical injuries that had occurred on his shift (Appellant's Exhibit #'s and that he did receive timely notice of injury (for both injuries, one in January and one in October of 1995) and medical statements from more than

**one physician showing that her injuries were "solely job related" (Appellant's Exhibit # )because, as he told Tidwell, this was not necessary (See the three Affidavits in Plaintiff's Exhibit #'s 5, 6, & 7).**

One example of the evidence that Tidwell's attorneys had at the time of trial and failed to use was the testimony of Mr. Mike Ellis. Tidwell's former attorney that was handling this case (he no longer practices Law) repeatedly promised to contact Mike Ellis prior to the worker's compensation hearing. His testimony was a critical part of Tidwell's former attorney's legal strategy (Appellant's Exhibit # 1) **Mr. Ellis was Tidwell's supervisor at the time of the January 1995 injury. Mr. Ellis does recall this injury and he confirms that Tidwell did indeed give him immediate notice of this injury (Plaintiff's Exhibit # 28). Tidwell's former attorney had advised Tidwell (Plaintiff's Exhibit # 29, The Affidavit of Caren Tidwell dated January 2, 2001) that Mr. Ellis' testimony was critical to proving her case and this is also shown in Mr. Strickland's original complaint filed by him on Tidwell's behalf (Plaintiff's Exhibit # 1). One attempt was made to enter the testimony of Mr. Ellis after the adverse ruling (Plaintiff's Exhibit # 27), at her Motion to Reconsider, Alter, Amend, etc., but his testimony could not be considered because the original Defendant's council (Mr. Craig Alexander) successfully argued that Tidwell's attorneys had this evidence at the time of trial but they had failed to use it (Plaintiff's Exhibit # 35).** The exclusion of this witness's testimony led to proof and notice of injury not being established and therefore, the Judge ruled that Tidwell or Tidwell's attorney's did not prove the burden of proof and all claims were denied***. BellSouth argued that Tidwell did not suffer a compensable injury on January 30, 1995 and that she did not give her employer timely notice of this accident. BellSouth's post trial brief also "denies that Tidwell gave a notice of her alleged January 30, 1995 accident and injury". BellSouth claims that it first received notice of this claim in her complaint filed by her former attorneys on September 18, 1996. BellSouth contended that notice of the accident in

January of 1995 was not given to BellSouth within 90 days and therefore under Alabama Law, it was not compensable. Now that the hearing is over and BellSouth has escaped the liability of caring for their injured employee, BellSouth now acknowledges that it did indeed receive timely notice of both injuries. Tidwell's former attorneys never contacted Tidwell's supervisor, Mr. Mike Ellis prior to trial. Mr. Ellis was the supervisor on duty when the injury occurred in January of 1995. This was the disputed injury and the management at BellSouth knew of this injury and they have now admitted that they did indeed receive timely and immediate notice of that injury. However, Judge Woodall or the higher level Courts on review did not get to consider the fact that the "disputed" injury did occur at her place of employment and that she did give her supervisor immediate notice. Mr. Ellis has also testified that a report was not filed and he had never been trained on what to do if an employee was injured. He was willing to testify on Tidwell's behalf, however, Tidwell's attorney never got around to contacting him prior to trial. After the adverse ruling, Mr. Ellis was subpoenaed by Tidwell's attorneys to testify on Tidwell's behalf at the Motion of Reconsideration, Alter, Amend, etc., however, the original Defendant's attorney successfully argued that Tidwell's attorneys knew of this witness before Judge Woodall made his ruling but since Tidwell's attorneys failed to contact this witness and submit his statement into evidence before Judge Woodall made his ruling, it had to be excluded and could not be considered by Judge Woodall or the higher level courts on review.*** They do acknowledge that Tidwell did suffer an on the job accident on October 30, 1995 which was reported and accepted by BellSouth as a worker's compensation injury***.

Please note that Mr. Strickland claims that he submitted evidence that went to this post trial brief but please take into consideration that none of the evidence that he claims to have entered is mentioned in Judge Woodall's order (Plaintiff's Exhibit # 31). Judge Woodall's Order mirrors the Defendant's post trial brief. It is reasonable to believe that Judge Woodall did not have this evidence because he simply

would not have ignored statements such as Dr. Anne Mason's evaluation firmly stating that Tidwell's "injuries were solely job related" and that Dr. Mason had been requested to review all of Tidwell's records by Dr. Faulkner and Dr. Goodman and give a detailed statement regarding her injuries and the causation of her injuries. Tidwell also believes that Judge Woodall would also have not simply ignored insurance statements by Dr. Faulkner repeatedly notifying BellSouth that Tidwell was injured in an accident at their place of employment on October 30, 1995 and her injuries were not from any other accident or pre-existing condition (all of this evidence is closely examined in Appendix B, located in the Record).

The Honorable Judge Thomas Woodall now sits on the Alabama Supreme Court and he has a background in insurance law. He is a Judge that is known to be thorough and fair and it is not reasonable to believe that he simply ignored the evidence that Strickland claims that he submitted. Judge Woodall was prevented from considering the disputed evidence because Tidwell's attorney did not timely submit the evidence before Judge Woodall made his ruling. Even **IF** the post trial brief contained the evidence that Strickland claims was submitted (which the evidence shows that he failed to submit these documents), there was still critical evidence and testimonies that he failed to enter into evidence before Judge Woodall made his ruling. Some of the evidence is examined below but Tidwell would like the Court to note that that Strickland still omitted critical evidence in his initial post trial brief such as the testimony of Mike Ellis, the supervisor that Tidwell reported the January 1995 injury to. This omitted testimony is an elementary fundamental of Law. When an employee is injured, notice of that injury to the employer is required to be proven by the Plaintiff. Tidwell had this evidence but Strickland failed to submit it.

The submission of the evidence that went to Strickland's post trial brief is noted in the Case Action Summary after the ruling was entered (Plaintiff's Exhibit # 34, also see

Plaintiff's Exhibit # 26). There is also no comments in Judge Woodall's ruling that confirms that Strickland did enter this binder of evidence prior to Judge Woodall making his Ruling. Also note that only 2 Plaintiff's Exhibits are noted on the evidence listing from this case (Plaintiff's Exhibit # 26) which included Plaintiff's Exhibits (1) the deposition of Alicia Alvarez (testimony regarding the degree of her disability only and Plaintiff's Exhibit # 25 in this case) and (2) the *post trial* deposition of Lee Waldrup (giving Tidwell a 100% disability rating). Tidwell claims that Judge Woodall made his ruling based on the evidence admitted into evidence and the evidence admitted into evidence prior to his ruling is listed on these sheets (Plaintiff's Exhibit # 26 a & 26 b) and none of the other evidence was considered, nor was it mentioned in Judge Woodall's Order (Plaintiff's Exhibit # 8, 27, 28, 31, 35, 38, 39, 40 and 44). The adverse ruling was announced and Tidwell's attorney's attempted to enter belated evidence into the Record (Plaintiff's Exhibit #'s 8, 27, 28, 33, 35, 38, 39, 40 and 44). The evidence listed in these exhibits were NOT CUMLATIVE TO THE RECORD. Her attorney's filed a Motion of Reconsideration, Alter, Amend, Grant a new trial, etc., but her Motion was denied because Tidwell's attorney's had the evidence at the time of trial and they had failed to use it before the ruling (Plaintiff's Exhibit # 35). Even if the evidence mentioned in Strickland's post trial brief was timely submitted, (and Tidwell disputes that this evidence was timely submitted) there was still evidence, that according to Mr. Strickland's own legal strategy was critical to be weighed by the Judge and that evidence was never entered into evidence prior to Judge Woodall making his ruling and the evidence that was omitted could have changed the outcome of the trial and it was NOT cumulative to the Record (Evidence mentioned in Strickland's Post Trial Brief still did not include Plaintiff's Exhibit #'s 8, 27, 28, 33, 35, 38, 39, 40 and 44.) Due to her attorney's failure to timely submit this evidence (which was the true reason that her post trial motions and appeals were denied was not disclosed to her so she could not make an informed decision on how to proceed with her cases – See

confrontation of Tidwell and Alexander in Plaintiff's Exhibit # 46 and the Affidavit of Craig Alexander, Plaintiff's Exhibit # 44), Because of Tidwell's attorney's failures, Judge Woodall or the higher level Courts could not consider this evidence.

BellSouth further asserted in their post trial brief that "if the Court finds that Tidwell did not suffer a compensable injury as alleged on January 30, 1995, or that she failed to give adequate notice of a worker's compensation accident and injury occurring then, and that she has proven no permanent disability resulting from her October 30, 1995 accident, this Court will not need to reach the issue of whether Tidwell is totally disabled" (Plaintiff's Exhibit # 24, page 8).
The Court never had to address the degree of Tidwell's disability because Tidwell's former attorneys did not enter the evidence before Judge Woodall made his ruling that heavily supported her position. They repeatedly promised that they would submit this specific evidence (and the submission of this evidence was critical according to their own legal strategy), however, they failed to do so and the trial court found that she did not carry her burden of proof.

In a attempt to enter belated evidence (which included medical documentation regarding causation which was not cumulative to the Record and the testimony of many witnesses who were willing to testify on Tidwell's behalf including testimony from supervisors regarding her injuries and that they had indeed received immediate notice of both injuries and testimony from Dr. Gibson's (company appointed physician) Office Manager's that straightened out unintentional damaging statements made about Tidwell in Dr. Gibson's deposition due to her staff's error in Dr. Gibson having an incomplete and incorrect chart at the time of his deposition.. Tidwell's attorneys were suppose to contact this witness before her worker's compensation hearing and again they promised that her testimony would be submitted to Judge Woodall by affidavit before he made his ruling, however, they failed to do so. The original Defendant was well aware of these facts and although they knew that she

was injured on the job and they gloat with delight because they have legally escaped the financial burden of caring for their injured employee, Tidwell. This has created a serious situation that continues to cause substantial adverse effects to Tidwell concerning her medical care or lack of it. Tidwell's former attorney filed a Motion to Alter, Amend, Reconsider, Grant a New Trial, etc. and attempted to enter the critical evidence (that was not cumulative to the Record) that they had failed to file before Judge Woodall entered his Order in February of 1998. **On April 19, 1999, the original Defendant's attorney responded to Tidwell's attorney's Motion to Alter, Amend, Reconsider, etc. stating that (Plaintiff's Exhibit D) "Tidwell's attorneys had ample opportunity to present her witnesses and evidence at trial and her attorney had failed to do so." The original Defendant's attorney successfully argued that the evidence "which if considered could change the result reached by the Court", could not be considered and her Motions were denied. Tidwell's former attorneys did not disclose to her that the Defendant had been successful in excluding critical evidence in Tidwell's original worker's compensation trial that was <u>not</u> cumulative to the Record because they had failed to timely submit the critical evidence and this led to an adverse ruling. The original Defendant's attorney had come forward on Tidwell's behalf in this legal malpractice action and his affidavit is located in the Black Binder.**

Due to the adverse ruling as noted above, Tidwell was left with no Worker's Compensation benefits, no job, and no payment for past, no present, and no future medical benefits. Tidwell has had repeated physician and vocational examinations which confirm that Tidwell was 100% disabled as of November of 1996 and that she is still 100% disabled to this date.

**Due to the neglect and errors that led to Tidwell's denial of her entitled worker's compensation benefits, the original Defendant boasts that they are not responsible for Tidwell under their "self funded" Worker's Compensation**

**Program, "as distasteful as that might be to her" and in direct conflict to this position, the Defendant claims that their "self funded" Blue Cross/Blue Shield is also not responsible because under their "self funded" Blue Cross/Blue Shield policy they are not responsible for payment for work related injures and that the bills should be submitted to her worker's compensation carrier (which is themselves and they also deny payment).**

After the adverse ruling, Tidwell's attorneys appealed however they failed to inform her of what had happened during their handling of her cases and she was denied the opportunity to make informed decisions regarding how to proceed in her cases. They had an undisclosed conflict of interest. Mr. Ragsdale took over her cases from his younger associate, Mr. Strickland. After a few years of practicing law, Mr. Strickland is no longer practicing law and has left this field to "pursue other interest."

Tidwell and others had been informed that her worker's compensation hearing was a matter of the degree of disability only and that her injuries had been acknowledged as compensable under the Worker's Compensation Act. When the adverse ruling was announced (plaintiff had not carried her burden of proof), Tidwell and others were led to believe that the original Defense Attorney (Mr. Craig Alexander) had somehow mislead her attorney (Mr. Strickland) into believing that their was no need to show causation for either injury because this had been agreed to by both parties attorneys pre-trial. Instead of informing Tidwell that her attorney had misadvised her on the purpose of the original hearing, **Tidwell was lead to believe that Mr. Alexander was the one that caused the confusion concerning pre-trial stipulations.** Ironically, on the date that the Alabama Supreme Court denied Tidwell's final appeal in her worker's compensation case (Tidwell did not have knowledge of their ruling until right before she, her father, and Mr. Alexander had an appointment), Tidwell had an appointment with the original defendant's attorney, Mr. Craig Alexander. Mr. Ragsdale was still Tidwell's attorney, however, he had failed at making any progress on getting Tidwell much needed medical care after the adverse ruling.

Tidwell was in serious physical trouble and desperately needed medical treatment. Mr. Ragsdale contacted Tidwell and asked if she wanted to go and talk to the original defendant's attorney, Mr. Alexander. Tidwell, being desperate agreed to meet with the original Defendant's attorney to see what, if anything, could be done to help Tidwell get some sort of medical care. Although Mr. Ragsdale was still Tidwell's attorney, he did not have the time to attend this meeting with her so Tidwell and her father, Mr. Robert Jennings, went to BellSouth's attorney's office to try to receive help in straightening out his clients contradictory decisions regarding who if anyone was going to provide her with present and future medical care. It was then that Tidwell civilly but firmly stated to Mr. Alexander that she did not understand how he could get away with misleading her and her attorney into court believing that the hearing was a "disability determination only". Tidwell went on to inform Mr. Alexander that because he had tricked her attorney pre-trial, they did not enter critical evidence and witness testimonies showing causation because he and Tidwell's attorney had already agreed that the injuries were compensable and the showing of such evidence was not necessary. Tidwell explained to Mr. Alexander that this situation created by him and his client had destroyed her and her children's lives and she did not know how he slept at night by tricking the disabled into court. Mr. Alexander had no idea of what Tidwell was talking about. He assured Tidwell that he had nothing to do with any misunderstanding regarding the purpose of the original hearing and that he could produce documents confirming that in no way had he mislead Tidwell's attorney to believe that both injuries were compensable under the Worker's Compensation Act. His client had conceded that there was an accident on October 30, 1995 but the accident of January of 1995 was in dispute. Tidwell was devastated. She apologized to Mr. Alexander and commented that "she knew justice had not been served, she just didn't know who had served it". Mr. Alexander proved to Tidwell that it was her attorney, and not him, that had misunderstood the

purpose of the original hearing, erred, and then covered up his error. Mr. Alexander provided Tidwell with her attorney's and his pre-trial stipulations of fact and law and it was clear that the January injury was in dispute and causation was an issue to be addressed at trial, although Strickland told her it was not. Tidwell's attorneys never disclosed to Tidwell that due to their error that critical evidence was excluded from the Record forever. This was deceitful, unethical, and an undisclosed conflict of interest. By not informing Tidwell that all of her post trial motions and appeals were denied because their firm failed to timely submit the critical evidence, she could not make an informed decision on how to proceed with her case. She could have appealed on the basis of attorney incompetence but their error was covered up and Tidwell never had that opportunity.

In August of 2000, Tidwell went to the Court House and looked into the Record and it was then and only then did she read the Defendant's Response to the Plaintiff's Motion of Alter, Amend, Reconsider, etc. and that the reason that her motion was denied was because her attorneys had the evidence at the time of trial but they had failed to use it. Tidwell cried for days and she is still extremely hurt that her attorneys betrayed her.

On August 24, 2000, the alias "The Law Offices of Clay Ragsdale" withdrew from all of her cases leaving Tidwell with a monumental task of trying to solve her legal issues. The Worker's Compensation case was lost and issues such as present and future medical care was left unresolved. Other remaining issues were left neglected for years and witness had not been contacted and other elementary task of discovery had not been performed. Tidwell's former attorneys even refused to inform her of what their office had and had not done with regards her remaining issues. In addition, Tidwell had lost rights to medical care that she had before going to Court and she has been repeatedly threatened by several medical service providers to pay the bills regarding her work related injuries or they would file suit against her. This is what Tidwell is left with after the

alias "The Law Offices of Clay Ragsdale" handled her claims.

Tidwell contacted many attorneys seeking legal help. She was told on more than one occasion that she would have to pay by the hour because it was going to be a monumental task to straighten out her legal issues. Tidwell could not afford to pay an attorney by the hour because she already had well over $25,000 in medical expenses that she had paid out of her own pocket (all involved knew that Tidwell had serious injuries, she has been hospitalized over 18 times with these injuries). Tidwell has requested the Court to help her secure adequate representation. Tidwell is proceeding pro'se and her decision to proceed pro'se is not a voluntary one. Tidwell is doing the best that she can to try to follow the Rules of Procedure but openly admits that she is ignorant to all of the proper procedures (and this can lead to ineffective and inadequate counsel).

Proceeding pro'se involuntarily, she was forced to file a claim of legal malpractice against her former attorney. The original defendant's attorney (BellSouth - the Defendant in the "underlying case" attorney, Mr. Craig Alexander) has come forward on Tidwell's behalf and composed and submitted a 2 page affidavit on Tidwell's behalf in this case. Her former attorney, and the Appellee in this appeal, have intimidated her and they have sued her under the ALAA (even admitted that this was filed before the complaint or any information in the case had been read). (Also, Summary Judgment was granted to Tidwell's former attorneys because Tidwell's expert witness had a family emergency and she was unable to render an expert opinion before the discovery deadline).

Tidwell finds it sad to note that her "only crime" was that she was employed trying to help support her family, became injured on her job, was terminated, and denied worker's compensation benefits, lost all rights to reimbursement of the thousands of dollars that she has had to pay for out of pocket medical expenses, left with no present or future medical care, scared of facing a future in which she will need

much physical assistance in everyday living but will not be able to afford the help, being threatened by medical service providers for payment, can not afford adequate legal representation, and many other adverse situations that has been created after the alias "The Law Offices of Clay Ragsdale" handling or neglect of her cases, whichever may apply. Although the situation allowing the original Defendant to escape all financial liability to Tidwell was created by the failures of Tidwell's former attorneys, the original Defendant knows that Tidwell was seriously injured at their place of employment but assumes no responsibility because Tidwell's attorney's had evidence that supported her position before Judge Woodall ruled in this Case, however, they failed to admit these testimonies and documents into evidence. Again, these documents and testimonies were NOT cumulative to the Record before Judge Woodall.

Although Tidwell claims that it was her former attorney's, who is the Appellee in this appeal, failure to submit certain evidence (according to their own strategy and agreement with Tidwell) it is still not the legislative intent of the Worker's Compensation Act to deny injured employees benefits and medical care and worker's compensation should not be a contest of who had the best attorney. Tidwell is faced with physically and financially struggling for the rest of her life when her only "crime" was that she was employed to try to help support her children in the State of Alabama, was seriously injured on the job, and had to hire an attorney. Then her attorney failed to submit critical evidence and testimonies as promised, agreed upon by Tidwell and her former attorney, and required by law as proof and then their firm's error was covered up and the true reason that her post trial motions and appeals were denied was due to her attorney's failure to timely submit the critical evidence, leaving Tidwell to believe that the original defendant's attorney (Mr. Alexander) was to blame for the adverse ruling, which later proved to be untrue. This is manifestly unjust and the "punishment" that Tidwell will have to endure for the rest of her life does not fit the "crime".

This is truly "cruel and unusual punishment" which is not allowed by Law.

This original Defendant and Tidwell's former attorneys, knew that Tidwell had no pre-existing conditions before her transfer (because a company doctor had examined her prior to transfer because this job was so physicial that the spines of the employees were checked before the company would place an employee in that job position). Tidwell's former attorneys knew these facts also, however, again, they never checked into it. Tidwell's former attorneys were also aware that Tidwell had reported both injuries and both of her supervisors would testify on Tidwell's behalf - again, Tidwell's attorneys failed to contact these witnesses. The failure to call one of Tidwell's supervisors led to proof and the required notice of injury to excluded from the Record - a key piece of evidence and one that any lawyer would have presented on his client's behalf. Tidwell's attorney did attempt to submit this belated testimony at a post trial hearing but the original defendant's attorney had this evidence excluded because Tidwell's attorney's had failed to timely submit this evidence before Judge Woodall made his ruling. Tidwell's attorneys also knew that many other employees in the same job position had the same injuries as Tidwell. They were to contact numerous witnesses that were willing to testify on Tidwell's behalf, but again they promised but failed to do so prior to Judge Woodall made his ruling. Tidwell's attorneys also attempted to submit numerous affidavits and critical testimony at the post trial hearing, however, again all of the critical testimonies were excluded from the Record because the original defendant's attorney successfully argued that Tidwell's attorneys had this evidence at the time of trial, however, they had failed to timely submit this evidence. The original defendant's counsel does state in his post trial motion and in an affidavit that he gave for this legal malpractice case that the excluded testimonies and evidence "could have had an effect on the outcome of the trial".

On the date of Tidwell's worker's compensation hearing, a settlement was entered between BellSouth and Mr. Stanley

Paul Stevens. Mr. Stevens was the employee that replaced Tidwell while she was out with back surgery. He was injured in the same area of the spine while performing Tidwell's job duties. His "accident" was identical to Tidwell's January 30, 1995 injuries. Tidwell's attorneys knew that her machine partner had suffered identical injuries and that he did receive his worker's compensation benefits and he receives proper medical care for his injuries. This satisfies the "similar case rule" and Tidwell can show through facts that if another employee was in a similar type job would suffer similar type injuries and the person in that similar circumstance had any other attorney that they might have prevailed. According to Tidwell's former attorney's own strategy, his testimony was important and it was just one more example showing a "casual connection" between her job duties and her injuries as required by Law. Tidwell's attorneys planned to contact this witness but they never got around to it. Other employees were to testify that repeated injuries were not uncommon and this was a heavy manual labor job. Again, Tidwell's attorneys promised to but never did contact any of these witnesses. Not only could they confirm that this job was very physically demanding, they also could prove that Tidwell was able to do her job before the undisputed injury and that she was not able to do her job after the undisputed injury (October 30, 1995). Tidwell's attorneys never did contact these witnesses and they needed these critical witness statements before the post trial motion of reconsideration. Tidwell's attorneys were not going to have the time to gather these affidavits before the post trial hearing and they informed Tidwell that these witness's statements were critical and needed to be submitted prior to the post trial hearing. Because they did not have the time, they had Tidwell contact these witnesses and have them compose affidavits, go to the bank to have them notarized, and bring they to his office. This was done and Tidwell's former attorneys attempted to enter the numerous, critical affidavits into the Record after Judge Woodall's ruling but before the post trial motion of reconsideration. Here again, Tidwell's attorney's failures to timely submit this evidence

caused the critical evidence and testimonies to be excluded from being evaluated by Judge Woodall and this evidence was also excluded from the Record for the upper level courts to review on appeal.

The adverse ruling in the "underlying worker's compensation case" which is one of the main issues of this appeal has devastated Tidwell and her family. The original defendant gloats with glory because they have escaped the financial liability to Tidwell for injuries that she received at their place of employment. When Tidwell contacted the original defendant's attorney at the suggestion of her former attorney (meeting that Tidwell's former attorney did not have the time to attend), Tidwell was told that because of the ruling that "she was not covered under the Worker's Compensation Act but that did not mean that her injuries were not work related as distasteful as that might be to her". What this really means is that Tidwell's former employer knew that her injuries were work related and their very own "self funded", "self administrated" and "self policed" Blue Cross/Blue Shield medical plan rejected payments for Tidwell's medical care because their policy did not cover treatment for on the job injuries that she had received at their place of employment and that she should submit these bills to her worker's compensation carrier, which was also "self funded" "self administrated" and "self policed" by none other than themselves. Their "self funded" "self administrated" and "self policed" Worker's Compensation Department also rejected these bills because Tidwell lost at trial due to her attorney's failure to timely submit evidence. This has left Tidwell with little or no "real" medical care and this has been going on for years. Since the adverse ruling, Tidwell's attorneys withdrew, leaving her issues unresolved and incomplete and the adverse effects are continuing to cause Tidwell substantial and irreparable harm. Mr. Ragsdale did send Tidwell a book about Mind over Back Pain but that too was unsuccessful.

The alias "The Law Offices of Clay Ragsdale", who is the Appellee in this appeal was also representing Tidwell on other issues, such as a retaliatory discharge trial, ERISA case,

and other tort actions that arose out of the dispute between Tidwell and her employer. Years of delay and minimal discovery substantially prejudged Tidwell's rights. Tidwell repeatedly requested that this Appellee help her mitigate her damages and she repeatedly asked them what had and had not been done, which witness had or had not been contact, etc., but they refused to inform her of what they had or had not done in her cases. The trial for the tort actions was scheduled to begin in February of 2001. At that time, Tidwell received leave of the court in February of 2001 to amend the original complaint. The Courts found that the amendments to the Complaint were necessary to clarify exactly what Tidwell's complaints were (because the original complaint as drafted by her former attorney was too broad and vague and a more specific pleading was necessary). This is just one more example of how Tidwell's former attorneys neglected her cases.

The Petitioner is just an average citizen that was severely injured in a manual labor position (hospitalized over 18 times with these injuries) who hired this Respondent's firm to assist her in receiving the worker's compensation benefits that she was rightfully entitled to. Her machine partner was also identically injured and he did receive his worker's compensation, benefits, and medical care years ago and he used "any other lawyer" so that burden was automatically satisfied. A worker's comp trial was held and this Respondent's younger associate that worked for this firm (he no longer works for this firm and he also no longer practices Law) failed to submit critical evidence before the Judge made his ruling. After the adverse ruling, this Respondent scrambled to attempt to have the evidence entered into the Record. Evidence excluded included but was not limited to the supervisor's testimony that immediate notice of injury was given and he witnessed her injuries immediately after this was reported, numerous physicians statements that her injuries were job related, a two page evaluation from the physician assigned to do a disability determination in which she stated that this Petitioner's injuries were solely job

related, not caused from any pre-existing condition, nor was it caused from any other accident, statements from another company physician stating that the Petitioner's injuries were a result of the October 30, 1995 accident at work, not from any pre-existing condition, nor was it from any other accident, the numerous testimonies of the Petitioner's co-workers supporting her position, etc. The original opposing counsel, Mr. Craig Alexander, defending the Petitioner's employer, successfully argued at the Motion of Reconsideration that although the critical evidence that was not entered prior to the Judge's ruling was of such quality that it could have an effect on the outcome of the trial, that it could not be considered because this Petitioner's attorney had this evidence at the time of trial and that he had failed to timely submit the critical evidence prior to the Judge making his ruling. This caused all of the critical evidence never to be considered by the trial Court or the upper level courts on appeal. The Petitioner was led to believe that the adverse ruling had been caused by the original defendant's counsel breaching an agreed upon pre-trial stipulation and the Petitioner's attorney's (who is the Respondent in this Petition) failure to timely submit the critical evidence was not disclosed to the Petitioner. After all appeals were exhausted on the worker's comp case (all were denied – no opinion) this Petitioner had a civil but firm confrontation with the original defendant's attorney (the one that was unjustly blamed for the adverse ruling). It was then that this Petitioner discovered that it was her own attorney that had deceived her and had not disclosed to her that it was their firm that had failed to timely submit the critical evidence into the Record before the original trial judge made his ruling and that the original defendant's attorney successfully argued that due to their error that the critical evidence could not be considered by the trial or appellate courts, even though the evidence was of such quality that it could have an effect on the outcome of the trial. This Petitioner was drug through the process of ineffective appeals (based on her attorney's undisclosed conflict of interest) and what had occurred during the handling of her cases was not disclosed

to her. This prevented her from making an intelligent and informed decision on how to proceed with her cases. Not knowing the truth and after all appeals were exhausted, this Petitioner confronted the original defendant's attorney to ask him how he could look at himself in the mirror by breaching pre-trial stipulations which caused an adverse ruling. How could he intentionally cheat a severely injured worker out of her justly deserved benefits? It was then that the original defendant's attorney turned over documentation proving that it was the Petitioner's attorney's error (and the Respondent in this case) and not a breach in a pre-trial stipulation that had caused the adverse ruling. The original opposing counsel has come forward and composed and submitted a 2 page affidavit on the Petitioner's behalf. Below is some of the ruling, questions, and procedural rulings that I wish this Court to review.

The Petitioner's machine partner was also identically injured and he did receive his worker's compensation, benefits, and medical care years ago and he used "any other lawyer" so that burden was automatically satisfied. A worker's comp trial was held and this Respondent's younger associate that worked for this firm (he no longer works for this firm and he also no longer practices Law) failed to submit critical evidence before the Judge made his ruling. After the adverse ruling, this Respondent scrambled to attempt to have the evidence entered into the Record. Evidence excluded included but was not limited to the supervisor's testimony that immediate notice of injury was given and he witnessed her injuries immediately after this was reported, numerous physicians statements that her injuries were job related, a two page evaluation from the physician assigned to do a disability determination in which she stated that this Petitioner's injuries were solely job related, not caused from any pre-existing condition, nor was it caused from any other accident, statements from another company physician stating that the Petitioner's injuries were a result of the October 30, 1995 accident at work, not from any pre-existing

condition, nor was it from any other accident, the numerous testimonies of the Petitioner's co-workers supporting her position, etc. The original opposing counsel, Mr. Craig Alexander, defending the Petitioner's employer, successfully argued at the Motion of Reconsideration that although the critical evidence that was not entered prior to the Judge's ruling was of such quality that it could have an effect on the outcome of the trial, that it could not be considered because this Petitioner's attorney had this evidence at the time of trial and that he had failed to timely submit the critical evidence prior to the Judge making his ruling. This caused all of the critical evidence never to be considered by the trial Court or the upper level courts on appeal. The Petitioner was led to believe that the adverse ruling had been caused by the original defendant's counsel breaching an agreed upon pre-trial stipulation and the Petitioner's attorney's (who is the Respondent in this Petition) failure to timely submit the critical evidence was not disclosed to the Petitioner. After all appeals were exhausted on the worker's comp case (all were denied - no opinion) this Petitioner had a civil but firm confrontation with the original defendant's attorney (the one that was unjustly blamed for the adverse ruling). It was then that this Petitioner discovered that it was her own attorney that had deceived her and had not disclosed to her that it was their firm that had failed to timely submit the critical evidence into the Record before the original trial judge made his ruling and that the original defendant's attorney successfully argued that due to their error that the critical evidence could not be considered by the trial or appellate courts, even though the evidence was of such quality that it could have an effect on the outcome of the trial. This Petitioner was drug through the process of ineffective appeals (based on her attorney's undisclosed conflict of interest) and what had occurred during the handling of her cases was not disclosed to her. This prevented her from making an intelligent and informed decision on how to proceed with her cases. Not knowing the truth and after all appeals were exhausted, this Petitioner confronted the original defendant's attorney to ask him how he could look

at himself in the mirror by breaching pre-trial stipulations which caused an adverse ruling. How could he intentionally cheat a severely injured worker out of her justly deserved benefits? It was then that the original defendant's attorney turned over documentation proving that it was the Petitioner's attorney's error (and the Respondent in this case) and not a breach in a pre-trial stipulation that had caused the adverse ruling. The original opposing counsel has come forward and composed and submitted a 2 page affidavit on the Petitioner's behalf. Below is some of the ruling, questions, and procedural rulings that I wish this Court to review. Due to the tragic events of September 11th, the Petitioner's expert witness had to go to Tajikistan to save a baby. Upon her return, he mother suddenly and unexpectedly died. The Respondent's were notified in advance that the scheduled deposition was canceled. In addition to notifying the Respondent's counsel, the Court Reporting Agency, the Trial Court's Personal Clerk, the Petitioner filed a Motion and requested an extension in discovery until the expert could testify or until she returned and could return and turn over the Petitioner's files so another expert witness could be selected. The Petitioner requested a continuance and/or for another expert to be selected. Both requests were denied by the trial court. This was unreasonable and was not an appropriate procedural response and "special attention" was not afforded to the Involuntary Pro'se Litigant faced with a Summary Judgment Motion. This denied her due process and it denied her her day in Court, which by law, she was entitled to. The request was made prior to discovery ending and even though death occurred, another expert witness was not allowed to be selected. The Trial Court refused to allow the Petitioner's expert witness testify after her return because discovery was over. At that time, Dr. Susan Key, send a affidavit to the trial court of what had happened and that it was circumstances that could not be controlled (September 11th attack, traveling to Tajikistan to adopt a sick baby, and upon her return, her mother sudden and unexpectedly died). The Petitioner's expert put in the affidavit that she was in no emotional state

to review the many files and that these were circumstance that neither she nor the Petitioner had any control over and she requested that the Trial Court allow the Petitioner to select another expert witness and she returned her files. The Petitioner's request to select another expert witness was also denied by the trial court then and while the selected expert witness was gone. The Trial Court's Order only states that the Affidavit of Dr. Susan Key did not address the standard of care, it did not mention what events were actually occurring at that time. And in another questionable denial, the Respondent knowing that the Deposition had been canceled, that the Petitioner's expert had to go overseas, set up a "fake deposition" and held the "fake deposition" without notifying the Petitioner or the Petitioner's witness. Then the Respondent entered this into evidence with their Motion for Summary Judgment. The Petitioner was angry when she received the Motion and went immediately to the Court Reporting Agency with a witness and the Court Reporting Agency admitted that the deposition was suddenly rescheduled and no notice was given to the Petitioner or her witness – they just made it appear as if the Petitioner and her witness just didn't bother to show up. This is important for two reasons, one, "bad faith" tactics such as this one calls a parties credibility into question and two, the Petitioner Motioned the Court to Strike the "fake deposition" from the Record but her request were denied and this "fake deposition" was left in the Record to make it appear as if the Petitioner and her witness just didn't show up to their deposition. This was far from the truth. The Petitioner was not allowed to select another expert or be granted a continuance, nor was she allowed to use one of the many alternatives allowed by Rule and Law that were exceptions to expert witness testimony but the Respondent was allowed to leave fabricated evidence in the record that did not reflect the actual events that were occurring. This was not a reasonable procedural response by the Courts, especially dealing with an Involuntary Pro'se Litigant on a Motion for Summary Judgment. This was also a constitutional deprivation as well as a "dirty trick" that was

successful for the Respondent. (Affidavits of the three witnesses can be found at C. 195, C. 197, and C. 262). The "fake deposition" is located in the Record at C. 174 - 176. With regards to the tragic events that occurred with the Petitioner's Expert Witness, the Petitioner was not allowed a continuance - requested prior to discovery being over, not allowed to select another expert witness, so in a rare but courageous act, the opposing counsel in the Underlying Case came out in support of the Petitioner with his own two page affidavit supporting the Petitioner's position, many alternatives to expert witness testimony as allowed by Rule and Law were proposed but the trial Court rejected every one of them, including the original defendant's attorney's affidavit and substantial evidence in the Petitioner's favor, but the Respondent was allowed to leave the "fake deposition" in the Record even though it had been proven to have been a deposition that was "secretly" set up, the expert witness nor the Petitioner were never notified of the time and date, this deposition appears in the Record making it appear that the Petitioner or the witness just didn't bother to show up. This was totally fabricated and did not reflect the actual events that occurred. The Petitioner asked the Court to Strike this "fake deposition" from the Record but her request were denied and the fabricated evidence remains in the Record still today. The Respondent was granted everything even being allowed to withhold discovery information and fabricated evidence for the Record and allowed to leave it in evidence over the Petitioner's objections. All reasonable alternatives proposed by the Petitioner to the Trial Court were denied. **The Petitioner requested a continuance for her expert to return from her mother's funeral but that request was also denied. When a continuance was denied to await the return of the expert, the Petitioner requested to be allowed to select another expert -her requests were denied. When the expert was out of town due to her mother's death, the files that she was reviewing was locked in her office and unavailable to the Petitioner. There was only one other way to get that "expert opinion" with the files locked in the expert witness's office - (1) for the Court to consider the Petitioner**

as an expert in her own case which she qualified for under as a Pro'se Litigant or (2) the original defendant's counsel in the underlying case to step forward on behalf of the Petitioner. Both were requested and all were denied. It was from the original defendant's attorney (who definitely qualifies as an "expert witness" that had handled the underlying case and had files of his own. In a rare move, this attorney composed and submitted a two page affidavit on the Petitioner's behalf that by law substituted as an expert witness opinion considering all of the other evidence that related to him and what all had occurred in the Underlying Case. But once again, both of these alternatives were rejected by the Trial Court.

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APPENDIX K:

*State and Federal Rules of Procedure*

*Alabama Rules of Appellate Procedure – Rule 32 with Update.*

*Rule 32: Form and Length of Brief, Petitions, Motions, and Other Papers*
*Page 7, 10,*

The amendment allows the clerk of the appellate court to require a party to refile a noncompliant document in a form that complies with Rule 32.
The amendment allows for the clerk to deem a previously filed document that fails to comply with these rules as conditionally filed, subject to the requirement that the party file, within 14 days of the date the party is notified of the noncompliance, replacement documents that do comply with these rules.

*Update: Appendix E to Rule 32: Form and Length of Briefs, Petitions, Motions, and Other Papers;*

BBBB

*Noncompliance*

(c)Noncompliance.

(1) Acceptance of nonconforming documents. The clerk of the appellate court may exercise discretion to permit the filing of documents in which the violation of those portions of these rules governing format is exceedingly minor, if, in the judgment of the clerk, recomposition of the documents would be unwarranted. The requirements of this rule governing the format of documents shall be liberally construed to do substantial justice with respect to persons proceeding pro se.

***Alabama Rules of Appellate Procedure - Rule 39***
***Pages 3, 4,***

(a) Considerations Governing Certiorari Review; Grounds. Certiorari review is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons for the issuance of the writ.

(1) Civil Cases and Non-Death-Penalty Criminal Cases. In all civil cases and in all criminal cases other than cases in which the death penalty is imposed, petitions for writs of certiorari will be considered only:

(A) From decisions initially holding valid or invalid a city ordinance, a state statute, or a federal statute or treaty, or initially construing a controlling provision of the Alabama Constitution or the United States Constitution;

(B) From decisions that affect a class of constitutional, state, or county officers;

(C) From decisions where a material question requiring decision is one of first impression in Alabama;

(D) From decisions in conflict with prior decisions of the Supreme Court of the United States, the Supreme Court of Alabama, the Alabama Court of Criminal Appeals, or the Alabama Court of Civil Appeals; provided that:

1. When (a)(1)(D) is the basis of the petition, the petition must quote that part of the opinion of the court of appeals and that part of the prior decision the petitioner alleges are in conflict; or

2. Where it is not feasible to quote that part of the opinion either because no wording in the opinion clearly shows the conflict or because no opinion was issued, the petition shall state specifically and with particularity how the decision conflicts with a prior decision; and,

(E) Where the petitioner seeks to have overruled controlling Alabama Supreme Court cases that were followed in the decision of the court of appeals.

***Alabama Rules of Civil Procedure - Rule 56***
***Summary Judgment***
***Page 27***

**(a) For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of thirty (30) days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

**(b) For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

**(c) Motion and Proceedings Thereon.**

**(1) Form of Motion and Statement in Opposition Thereto.** The motion shall be supported by a narrative summary of what the movant contends to be the undisputed material facts; that narrative summary may be set forth in the motion or may be attached as an exhibit. The narrative summary shall be supported by specific references to pleadings,

portions of discovery materials, or affidavits and may include citations to legal authority. Any supporting documents that are not on file shall be attached as exhibits. If the opposing party contends that material facts are in dispute, that party shall file and serve a statement in opposition supported in the same manner as is provided herein for a summary of undisputed material facts.

(2) **Time.** The motion for summary judgment, with all supporting materials, including any briefs, shall be served at least ten (10) days before the time fixed for the hearing, except that a court may conduct a hearing on less than ten (10) days' notice with the consent of the parties concerned. Subject to subparagraph (f) of this rule, any statement or affidavit in opposition shall be served at least two (2) days prior to the hearing.

(3) **Judgment.** The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **Case Not Fully Adjudicated on Motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the

action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

**(e) Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

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**(f) When Evidentiary Matter Is Unavailable.** Should it appear from the affidavits of a party opposing the motion that the party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the court may deny the motion for summary judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

**(g) Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable

attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

**(h) District Court Rule.** Rule 56 applies in the district courts except that the references to thirty (30) days and ten (10) days are reduced to fourteen (14) days and seven (7) days, respectively. (Amended effective August 1, 1992; October 1, 1995.)

***Committee Comments on Rules 56***

"The summary judgment procedure is a method for promptly disposing of actions in which there is not genuine issue as to any material fact. It has been used in England for more than 50 years and has been adopted in a number of states. It is intended to prevent vexation and delay, improve the machinery of justice, promote the expeditious disposition of cases, and avoid unnecessary trials where no genuine issues of fact are raised .... The summary judgment procedure is not a substitute for the trial of disputed issues of fact. On a motion for summary judgment, the court cannot try issues of fact. It can only determine whether there are issues to be tried. The procedure is well adapted to expose sham claims and defenses but cannot be used to deprive a litigant of a proper trial of genuine issues of fact." 3 Barron & Holtzoff, Federal Practice and Procedure, ' 1231 (1958).

Summary judgment procedure must be regarded as an innovation in Alabama. The statutory authorization for summary proceedings, Tit.7, ' 591 et seq., Code of Ala. is so limited as to bear little similarity to the procedure here provided. This rule is virtually identical with Federal Rule 56 and the similar rules adopted in many states. It differs from the federal rule in requiring the claimant to wait 30 days before moving for summary judgment rather than 20 days as in the federal rule.

This rule is closely connected with Rule 12(b)(6), providing for a motion to dismiss for failure to state a claim on which

relief can be granted, and Rule 12(c), providing for a motion for judgment on the pleadings. If, on those Rule 12 motions, matters outside the pleadings are presented to and not excluded by the court, the motion is to be considered as for summary judgment, and the test of this rule is applicable. See Clark, The Summary Judgment, 36 Minn.L.Rev. 567, 573-576 (1952).

Unlike some earlier summary judgment procedures, this rule may be used in any kind of case by either party. 3 Barron & Holtzoff, Federal Practice and Procedure, ' 1232 (1958); Ritter & Magnuson, The Motion for Summary Judgment and its Extension to All Classes of Actions, 21 Marq.L.Rev. 33 (1936). The availability of the procedure in any action is not inconsistent with the obvious truth that there are some kinds of actions which almost inevitably present genuine issues of material fact, and in which summary judgment will rarely be proper. Negligence actions fall within this class. See Vosbeck v. Lerdall, 72 N.W.2d 371, 373-374 (Minn.1955); Davidson v. Kalmbacher, 74 A.2d 821 (Del.1950).

"Summary judgment procedure is not a catch-penny contrivance to take unwary litigants into its toils and deprive them of trial; it is a liberal measure, liberally designed for arriving at the truth. Its purpose is not to cut litigants off from their right of trial by jury if they really have evidence which they will offer on a trial, it is to carefully test this out, in advance of trial by inquiring and determining whether such evidence exists." Whitaker v. Coleman, 115 F.2d 305, 307 (5th Cir.1940), per Hutcheson, C.J.

The standard set out in subdivision(c) is that summary judgment may be granted only when the materials on file show that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law". As to when this test is met, see, e.g., Chappell v. Goltsman, 186 F.2d 215 (5th Cir.1950); Lawson v. American Motorists Ins. Corp., 217 F.2d 724 (5th Cir.1954); Asbill & Snell, Summary Judgment under the Federal Rules-

When an Issue of Fact is Presented, 51 Mich.L.Rev. 1143 (1952); Clark, The Summary Judgment, 36 Minn.L.Rev. 567, 576-579 (1952); Comm., "Genuineness" of Issues on Summary Judgment, 4 Fed.Rules Serv. 940 (1941); 3 Barron & Holtzoff, Federal Practice and Procedure, ' 1234 (1958); 6 Moore's Federal Practice, & 56.15 (2d ed. 1971). This test must be read in context with the Alabama "scintilla evidence" rule, which these rules do not disturb. See Rule 50. Thus, if there is a scintilla of evidence supporting the position of the party against whom the motion is made, so that at a trial he would be entitled to go to the jury, summary judgment cannot be granted. Affidavits to be considered on a motion for summary judgment must be made on personal knowledge and show affirmatively that the affiant is competent to testify as to the matters stated, and they may only set forth such facts as would be admissible in evidence.

Rule 56(e). Thus the court is not to consider statements in affidavits based on hearsay, or otherwise, inadmissible. E.g., Dyer v. MacDougall, 201 F.2d 265 (2d Cir.1952); Jameson v. Jameson, 176 F.2d 58 (D.C.Cir.1949); United States v. Britten, 161 F.2d 921 (3rd Cir.1947); 6 Moore's Federal Practice, & 56.22 (2d ed. 1953). Where a party cannot present facts sufficient to defeat a motion for summary judgment, but there is a good reason to believe he may have such evidence by the trial, the court has ample discretion either to deny the motion or to order a continuance. Rule 56 (f); Mason v. New York Cent. R.R., 8 F.R.D. 637 (W.D.N.Y.1949); United States v. Newbury Mfg. Co., 1 F.R.D. 718 (D.Mass.1941).

Mere allegations in a pleading are not enough to create a genuine issue of material fact as against a showing of evidence contrary to the allegations. See Rule 56(e).

***Committee Comments to August 1, 1992,***
***Amendment to Rule 56 (c) and Rule 56 (f)***

The August 1, 1992, amendments to Rule 56(c) and (f) are intended to provide a statewide procedure for submitting summary judgment motions and materials in support thereof and materials in opposition thereto. Many local rules throughout the state provided a variety of procedures for submitting and disposing of summary judgment motions. The committee felt that a uniform procedure should be incorporated in the rule so as to simplify practice in this area. It should be remembered that a trial judge, pursuant to Rule 6(b) ("Time"; "Enlargement"), may enlarge the periods set out in Rule 56(c) (2).

F.R.Civ.P. 56 (f) and former A.R.Civ.P. 56 (f) contain the words "by affidavit" in the context of evidentiary matter needed to justify opposition to a summary judgment. This revision changes the title of this subparagraph to read "When Evidentiary Matter is Unavailable" and deletes the phrase "by affidavit" from the text so as to eliminate an unnecessary restriction on the form of evidentiary matter adequate to justify opposition. For example, a deposition could just as easily support a statement in opposition to the motion. See 10A C. Wright & A. Miller, Federal Practice and Procedure, ' 2740, pp. 529-30 (1983), for a suggestion that F.R.Civ.P. 56(f) should be so interpreted, notwithstanding its use of the restrictive words "by affidavit." Note that this change does not alter the Rule 56(f) requirement of affidavits in support of a contention that a party is presently unable to present facts in opposition to the motion and that a continuance is therefore necessary. Such an affidavit should state with specificity why the opposing evidence is not presently available and should state, as specifically as possible, what future actions are contemplated to discover and present the opposing evidence.

***Committee Comments to October 1, 1995,***
***Amendment to Rule 56***

The amendment is technical. No substantive change is intended.

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***Federal Rules of Appellate Procedure - Rule 10.***
***Considerations Governing Review on Writ of Certiorari***
*Page 3, 4,*

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
- (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

***New Laws since the Decision***
See Appendix O

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After this Petitioner filed her appeal with the Alabama Supreme Court, mandatory expert testimony was overruled in Alabama. See how this violated my 14th Amendment Rights and the entire case released on November 27th, 2002. On March 28, 2003, the Alabama Supreme Court denied my Petition with a No Opinion Ruling, ignoring the Proposed Statement of Facts properly before the Court and ignoring the fact that my day in court was held to mandatory expert witness testimony, when reasonable alternatives were proposed to the trial court.

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***Amendment VII***

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any *court of the United States, than according to the rules of the common law.*

***Amendment VIII***

*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

***Amendment XIV***

*Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

.....

*As one of the Fourteenth Amendment's authors, Senator Jacob M. Howard of Michigan, declared;* "It establishes equality before the law, and it gives, to the humblest, the poorest, the most despised...the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or those most haughty...Without this principle of equal justice to all men and equal protection under the shield of the law, there can be no republican government and none that is really worth maintaining."—Pages 9 and 10.

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## *An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown.*

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*Whereas the Lords Spiritual and Temporal and Commons assembled at Westminster, lawfully, fully and freely representing all the estates of the people of this realm, did upon the thirteenth day of February in the year of our Lord one thousand six hundred eighty-eight [old style date] present unto their Majesties, then called and known by the names and style of William and Mary, prince and princess of Orange, being present in their proper persons, a certain declaration in writing made by the said Lords and Commons in the words following, viz.:*

*Whereas the late King James the Second, by the assistance of divers evil counsellors, judges and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom;*

*By assuming and exercising a power of dispensing with and suspending of laws and the execution of laws without consent of Parliament;*

*By committing and prosecuting divers worthy prelates for humbly petitioning to be excused from concurring to the said assumed power;*

*By issuing and causing to be executed a commission under the great seal for erecting a court called the Court of Commissioners for Ecclesiastical Causes;*

*By levying money for and to the use of the Crown by pretence of prerogative for other time and in other manner than the same was granted by Parliament;*

*By raising and keeping a standing army within this kingdom in time of peace without consent of Parliament, and quartering soldiers contrary to law;*

*By causing several good subjects being Protestants to be disarmed at the same time when papists were both armed and employed contrary to law;*

*By violating the freedom of election of members to serve in Parliament;*

*By prosecutions in the Court of King's Bench for matters and causes cognizable only in Parliament, and by divers other arbitrary and illegal courses;*

*And whereas of late years partial corrupt and unqualified persons have been returned and served on juries in trials, and particularly divers jurors in trials for high treason which were not freeholders;*

*And excessive bail hath been required of persons committed in criminal cases to elude the benefit of the laws made for the liberty of the subjects;*

*And excessive fines have been imposed;*

*And illegal and cruel punishments inflicted;*

*And several grants and promises made of fines and forfeitures before any conviction or judgment against the persons upon whom the same were to be levied;*

*All which are utterly and directly contrary to the known laws and statutes and freedom of this realm;*

*And whereas the said late King James the Second having abdicated the government and the throne being thereby vacant, his Highness the prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the Lords Spiritual and Temporal and divers principal persons of the Commons) cause*

*letters to be written to the Lords Spiritual and Temporal being Protestants, and other letters to the several counties, cities, universities, boroughs and cinque ports, for the choosing of such persons to represent them as were of right to be sent to Parliament, to meet and sit at Westminster upon the two and twentieth day of January in this year one thousand six hundred eighty and eight, in order to such an establishment as that their religion, laws and liberties might not again be in danger of being subverted, upon which letters elections having been accordingly made;*

*And thereupon the said Lords Spiritual and Temporal and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties declare:*

- *That the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal;*
- *That the pretended power of dispensing with laws or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal;*
- *That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature, are illegal and pernicious;*
- *That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal;*
- *That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal;*
- *That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law;*
- *That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law;*
- *That election of members of Parliament ought to be free;*

- *That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament;*
- *That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;*
- *That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders;*
- *That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void;*
- *And that for redress of all grievances, and for the amending, strengthening and preserving of the laws, Parliaments ought to be held frequently.*

*And they do claim, demand and insist upon all and singular the premises as their undoubted rights and liberties, and that no declarations, judgments, doings or proceedings to the prejudice of the people in any of the said premises ought in any wise to be drawn hereafter into consequence or example; to which demand of their rights they are particularly encouraged by the declaration of his Highness the prince of Orange as being the only means for obtaining a full redress and remedy therein.*

*Having therefore an entire confidence that his said Highness the prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights which they have here asserted, and from all other attempts upon their religion, rights and liberties, the said Lords Spiritual and Temporal and Commons assembled at Westminster do resolve that William and Mary, prince and princess of Orange, be and be declared king and queen of England, France and Ireland and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them, the said prince and princess, during their lives and the life of the survivor to them, and that the sole and full exercise of the regal power be only in and executed by the said prince of Orange in the names of the said prince and princess during their joint lives, and after their deceases the said crown and royal dignity of the same kingdoms and dominions to be to the heirs of the body of the said princess, and for default of such issue to the Princess Anne of Denmark and*

*the heirs of her body, and for default of such issue to the heirs of the body of the said prince of Orange. And the Lords Spiritual and Temporal and Commons do pray the said prince and princess to accept the same accordingly.*

*And that the oaths hereafter mentioned be taken by all persons of whom the oaths have allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.*

*I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to their Majesties King William and Queen Mary. So help me God.*

*I, A.B., do swear that I do from my heart abhor, detest and abjure as impious and heretical this damnable doctrine and position, that princes excommunicated or deprived by the Pope or any authority of the see of Rome may be deposed or murdered by their subjects or any other whatsoever. And I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm. So help me God.*

*Upon which their said Majesties did accept the crown and royal dignity of the kingdoms of England, France and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said Lords and Commons contained in the said declaration. And thereupon their Majesties were pleased that the said Lords Spiritual and Temporal and Commons, being the two Houses of Parliament, should continue to sit, and with their Majesties' royal concurrence make effectual provision for the settlement of the religion, laws and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted, to which the said Lords Spiritual and Temporal and Commons did agree, and proceed to act accordingly.*

*Now in pursuance of the premises the said Lords Spiritual and Temporal and Commons in Parliament assembled, for the ratifying, confirming and establishing the said declaration and the articles, clauses, matters and things therein contained by the force*

*of law made in due form by authority of Parliament, do pray that it may be declared and enacted that all and singular the rights and liberties asserted and claimed in the said declaration are the true, ancient and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed and taken to be; and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said declaration, and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all time to come.*

*And the said Lords Spiritual and Temporal and Commons, seriously considering how it hath pleased Almighty God in his marvellous providence and merciful goodness to this nation to provide and preserve their said Majesties' royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto him from the bottom of their hearts their humblest thanks and praises, do truly, firmly, assuredly and in the sincerity of their hearts think, and do hereby recognize, acknowledge and declare, that King James the Second having abdicated the government, and their Majesties having accepted the crown and royal dignity as aforesaid, their said Majesties did become, were, are and of right ought to be by the laws of this realm our sovereign liege lord and lady, king and queen of England, France and Ireland and the dominions thereunto belonging, in and to whose princely persons the royal state, crown and dignity of the said realms with all honours, styles, titles, regalities, prerogatives, powers, jurisdictions and authorities to the same belonging and appertaining are most fully, rightfully and entirely invested and incorporated, united and annexed.*

*And for preventing all questions and divisions in this realm by reason of any pretended titles to the crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquility and safety of this nation doth under God wholly consist and depend, the said Lords Spiritual and Temporal and Commons do beseech their Majesties that it may be enacted, established and declared, that the crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and*

*continue to their said Majesties and the survivor of them during their lives and the life of the survivor of them, and that the entire, perfect and full exercise of the regal power and government be only in and executed by his Majesty in the names of both their Majesties during their joint lives; and after their deceases the said crown and premises shall be and remain to the heirs of the body of her Majesty, and for default of such issue to her Royal Highness the Princess Anne of Denmark and the heirs of the body of his said Majesty; and thereunto the said Lords Spiritual and Temporal and Commons do in the name of all the people aforesaid most humbly and faithfully submit themselves, their heirs and posterities for ever, and do faithfully promise that they will stand to, maintain and defend their said Majesties, and also the limitation and succession of the crown herein specified and contained, to the utmost of their powers with their lives and estates against all persons whatsoever that shall attempt anything to the contrary.*

*And whereas it hath been found by experience that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a popish prince, or by any king or queen marrying a papist, the said Lords Spiritual and Temporal and Commons do further pray that it may be enacted, that all and every person and persons that is, are or shall be reconciled to or shall hold communion with the see or Church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded and be for ever incapable to inherit, possess or enjoy the crown and government of this realm and Ireland and the dominions thereunto belonging or any part of the same, or to have, use or exercise any regal power, authority or jurisdiction within the same; and in all and every such case or cases the people of these realms shall be and are hereby absolved of their allegiance; and the said crown and government shall from time to time descend to and be enjoyed by such person or persons being Protestants as should have inherited and enjoyed the same in case the said person or persons so reconciled, holding communion or professing or marrying as aforesaid were naturally dead; and that every king and queen of this realm who at any time hereafter shall come to and succeed in the imperial crown of this kingdom shall on the first day of the meeting of the first Parliament next after his or her coming to the crown, sitting in his or her throne in the House of Peers in the*

*presence of the Lords and Commons therein assembled, or at his or her coronation before such person or persons who shall administer the coronation oath to him or her at the time of his or her taking the said oath (which shall first happen), make, subscribe and audibly repeat the declaration mentioned in the statute made in the thirtieth year of the reign of King Charles the Second entitled, "An Act for the more effectual preserving the king's person and government by disabling papists from sitting in either House of Parliament."*

*But if it shall happen that such king or queen upon his or her succession to the crown of this realm shall be under the age of twelve years, then every such king or queen shall make, subscribe and audibly repeat the same declaration at his or her coronation or the first day of the meeting of the first Parliament as aforesaid which shall first happen after such king or queen shall have attained the said age of twelve years. All which their Majesties are contented and pleased shall be declared, enacted and established by authority of this present Parliament, and shall stand, remain and be the law of this realm for ever; and the same are by their said Majesties, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in Parliament assembled and by the authority of the same, declared, enacted and established accordingly.*

*II. And be it further declared and enacted by the authority aforesaid, that from and after this present session of Parliament no dispensation by "non obstante" of or to any statute or any part thereof shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of Parliament.*

*III. Provided that no charter or grant or pardon granted before the three and twentieth day of October in the year of our Lord one thousand six hundred eighty-nine shall be any ways impeached or invalidated by this Act, but that the same shall be and remain of the same force and effect in law and no other than as if this Act had never been made.*

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***Alabama Declaration of Rights***

*ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) as amended through 1966 - ARTICLE I. DECLARATION OF RIGHTS Section 13.*

***Declaration of Rights:*** *"That the great, general, and essential principles of liberty and free government may be recognized and established, we declare:"*
***Section 13:*** *"That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay*

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***The Doctrine of Res isa loquior***

As *res ipsa loquitor* is defined in the Merriam Webster's Dictionary of Law, *"the thing (or evidence that has already been submitted) speaks for itself"*. Also quoted in the Merriam Webster's Dictionary of Law it states: *"A plaintiff who establishes the elements of res ipsa loquitor can withstand a motion for summary judgment and reach the jury without direct proof of negligence", Cox v. May Department Store Company, 903 P. 2d 1119 (1995)"*. Presented to the Trial Court and the Appellate Courts as Plaintiff's or Appellant's Exhibit # 60 which details how this doctrine applies to the appeal at hand.

***Full Citations Used in the Petition to the United States Supreme Court Brief***

The United States Supreme Court has stated "The denial of a pro se litigant on technical ground is against the legal

precedent from the US Supreme Court applicable to the pro se...[d]ecisions of the US Supreme Court rendered by written opinion are binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value." *Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974)*. Pages 5, 27, 30,

"... [t]he state may violate the constitution by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation." *Daniel v Williams, 474 US 327 at 337/8, (1985).* The use of technicalities to deprive a litigant of his appeal is a violation of the Rules of Civil Procedure, and a constitutional deprivation. "[W]e no longer approach pleadings searching for a flaw, a technicality upon which to strike down a claim or defense as was formally the case at common law" *Bertlesman & Phillips, Ky Practice, Vol 6 at p. 144. - Smith v Isaacs, 777 SW2d 912 at 715, (1989).* ".....[v]ague pro se appeal will be heard." *SEC v Vanco, 283 F2d 304 at 305, (3rd Cir 1960)* "Significantly, the Haines case involved a pro se complaint - as does the present case - which requires a less stringent reading than one drafted by a lawyer." *Puckett v. Cox United States Court of Appeals (1972). Judge Crawley (from the Appellate Court in Alabama where this Petitioner's appeal was filed) stated* "the Language used by a pro se litigant can not be viewed in a technical sense." *So. 2d at.* "We cannot and should not expect a pro se litigant to use the same technical precision that we expect from a lawyer."....Further stating that "A court is to construe pleadings so as to do substantial justice, *Rule 8 (f), Alabama Rules of Civil Procedure." Quoted from Supreme Court of Alabama, 1970987, 1999.* "[A]llegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears 'beyond doubt that the plaintiff can prove

no set of facts in support of his claim which would entitle him to relief'." *Haines v. Kerner, 404 U.S. 519 (1972) (cites omitted).* ". . .[a] pro se complaint " however inartfully pleaded" must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v Gibson, 355 US 41 at 45/6, (1957); (Other citations supporting this Law is located in Appendix K.)* "Third, we have a duty to "liberally construe [a pro se litigant's] assertions to discern whether jurisdiction to consider his motion can be founded on a legally justifiable base." *Fernandez v. United States, 941 F.2d 1488, 1491 (11th Cir.1991); Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 596, 30 L.Ed.2d 652 (1972)* (noting that pro se pleadings should be held "to less stringent standards than formal pleadings drafted by lawyers"). *U. S. Court of Appeals, 11th Circuit. No. 96-6886, Sanders v. United States of America, May 9, 1997.* Pages 6, 7,

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*Gamble, 429 US 97, (1976); also Hughes v Rowe, 449 US 5 at 10, (1980); Little v Streater, 452 US 1 at 5/6, (1981) due process; Wilwording v Swenson, 404 US 249 at 250/51, (1971); Wright v Collins, 766 F2d 841 at 846, (4th Cir 1985); Jacobson v Filler, 790 F2d 1362 at1367, (9th Cir 1986); Borzeka v Heckler, 739 F2d 444 at 447 n2, (9th Cir 1984); Garaux v Pully, 739 F2d 437 at 439, (9th Cir 1984); Parisie v Greer, 705 F2d 882 at 898, (7th Cir 1983); Moore v Fla, 703 F2d 516 at 520, (11th Cir 1983); Meritt v Faulkner, 697 F2d 761 at 769, (7th Cir 1983); Myers v US, 636 F2d 166 at 168/69, (6th Cir 1981); Gordon v Leeke, 574 F2d 1147 at 1152/53, (4th Cir 1978); Roseboro v Garrison, 528 F2d 309, (4th Cir 1975);* ——Pages 6, 7,

"However, a deceit count was revised and permitted to go to the jury, as it would not require expert testimony." *17 Mass. App. At 565-567, 460 N.E.2d at 1050.*—Page 7,

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"Because Plaintiff is pro se, the Court will consider factual averments (declarations or assertions) in his responses as evidence to the extent that they are not contradicted by other sworn testimony of Plaintiff." *See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991)* "allegations presented in a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers." *(Memorandum Opinion at 2 n.2) (Citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10, 1996),* "Furthermore, "a court must assume a pro se

plaintiff's factual allegations are true and construe his claim liberally."—Page 8,

"Appeal is a right, due to all litigants equally, under whatever rules the state sees fit to impose. What is fair procedure for one is to be equally applied to all." "[w]hen appeal is afforded. . . . it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the equal protection clause." *Griffin v Illinois, 351 US 12 at 18 (1955); Smith v Bennett, 365 US 708, (1961); Lane v Brown, 371 US 477, (1963); Long v Dist Court of Iowa, 385 US 192, (1966); Gardiner v Calif, 393 US 367, (1969); Lindsay v Normet, 405 US 56 at 77, (1971); Cochran v Kansas, 316 US 255, (1942); Frank v Mangum, 237 US 309 at 327, (1914).*—Pages 14, 15,

"Appeal is an element of *Due Process* and protected by the *14th Amendment.* "[D]ue process is secured by the laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the power of government unrestrained by the established principles of private right and distributive justice." *Maxwell v Dowell, 176 US 581 at 602, (1899), cites Leeper v Texas, 139 US 462 at 467, (1891);*—Page 14,

'appeal is an element of Due Process and protected by the 14th Amendment." *Maxwell v. Dowell, 176 US 581 at 602, (1899), cites Leeper v. Texas, 139 US 462 at 467, (1891).* Page 14,

"[n]o state can deprive particular person or classes of persons of equal and impartial justice under the law without violating the provisions of the *14th amendment of the constitution* . . . due process of law within the meaning of the constitution is secured where the law operate on all alike and no one is subject to partial or arbitrary exercise of the powers of the government. . ." *"Caldwell v Texas, 137 US 692 (1891) cited in Merchant v Penn RR, 153 US 380 at 382, (1893);*—-Page 14,

"The denial of an appeal which is brought under the Rules of Civil Procedure is a constitutional deprivation and a denial of access to the court when it is denied in an unreasonable and arbitrary manner. ". . ." [i]n this court the state admits, as it must, that a discriminatory denial of the statutory right of appeal is a violation of *the equal protection clause of the 14th Amendment* ". . . . ." *Cochran v Kansas, 316 US 255, as cited in Dowd v Cook, U S, 340 US 206 at 208 (1950); Harper v Va Board of Elections, 383 US 663 at 673, (1966).*—Page 14, 15,

Alabama did not construe the pleadings so substantial justice was done, as required by the *Alabama Rules of Civil Procedure* —Pages 7, 10,

".....[d]ue process of law guaranteed by the 14th Amendment has regard to substance of right and not to matters of form and procedure. . . the entire course of proceedings, and not merely one step, must be considered". *Frank v Mangum, 237 US 309, (1916).*—Page 14,

***Black*** "[d]istinctions and discriminations which violate Equal Protection class are irrationality; irrelevant; unreasonable; arbitrary, invidious;" "[a]ny . state statute - must be applied uniformly; otherwise the Equal Protection clause of the 14th Amendment is violated" *Regan v NY, 349 US 58 at 66, (1954).*—Pages 14, 15,

"[T]he great purpose of the requirements of due process is to exclude everything that is arbitrary and capricious. . . we are constrained to conclude that they [the requirements of due process] do not leave room for the play and action of purely personal and arbitrary power." *Pennoyer v Neff, 95 US 714 at 733, (1877); Davidson v N Orleans, 96 US 97, 104, 107, (1878); Hurtado v Calif, 110 US 516, (1883); Missouri RR v Humes, 115 US 512 at 519, (1884/5); as cited in Dent v W VA, 129 US 114 at 122/24, (1888)*—Pages 14, 15,

"[a]lthough not specifically mentioned in the constitution, the right of court access is based upon the 1st and 14th

Amendment" *Vaughn v Trotter, 516 F Supp 886 at 892, (MD Tenn. 1980);* "At the base of this skepticism has been the suspicion that summary judgment "borders on denial of due process in that it denies the opposing party his day in court." *Olson v. Auto Owners Insurance Company, 700 SW 2d 882, 884, (MO App.E.D. 1985) (C. 389 #1).*—Page 15,

*ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) as amended through 1966 - ARTICLE I.* "That the great, general, and essential principles of liberty and free government may be recognized and established, we declare: *Sec. 13* "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay."— Pages 6, 7, 15,

"However, a deceit count was revised and permitted to go to the jury, as it would not require expert testimony." *17 Mass. App. At 565-567, 460 N.E.2d at 1050.*—Page 7, 22,

The Petitioner applied *The Doctrine of Res isa loquior* fully explaining the conditions backed by the supporting citing of Law that states "A plaintiff who establishes the elements of *res isa loquior* can withstand a motion of summary judgment and reach the jury without direct proof of negligence". *Cox v. May Department Store Company 903 P. 2d 119 (1995).*—Page 24,

". . . [t]he state may violate the constitution by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation. *Daniel v Williams, 474 US 327 at 337/8, 1985;*—Page 24,

"[d]ecisions on the merits are not to be avoided on the basis of "mere technicalities" *Foman v Davis, 371 US 178 at 181, (1962); NAACP v Alabama, 377 US 288, (1964); Hovel v Elliott, 167 US 409 at 413/14, (1897);*—Page 24,

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*White J dissent*:- "[t]he principle function of procedural rules should be to serve as useful guide to help, not hinder, persons who have a legal right to bring their problems before the court. *Sup Ct New Rule Order, 346 US 945 at 946, (1954) Black CJ, as cited in Schiavone v Fortune, AKA Time Inc., 477 US 21, (1986)*; —Page 24,

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"[T]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by council may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v Gibson, 355 US 41 at 48, (1957); Schiavone v*

*Fortune, 477 US 21 at 27, 39, (1985); Zenith Radio v Hazeltine, 401 US 321 at 335, (1970); Williard Dairy v Nat Dairy, 373 US 934 at 935, (6th Cir 1962) denied- Black J dissent; US v Hougham, 364 US 310 at 317, (1960); Foman v Davis, 371 US 178 at 181, (1962); Mayor v Ed Equality League, 415 US 605 at 634, n1, (1973) White J dissent-* "[t]he principle function of procedural rules should be to serve as useful guide to help, not hinder, persons who have a legal right to bring their problems before the court. *Sup Ct New Rule Order, 346 US 945 at 946, (1954) Black CJ, as cited in Schiavone v Fortune, AKA Time Inc., 477 US 21, (1986);* — Page 25,

"[i]n determining whether rights were denied we are governed by the substance of things and not mere form." *L&N v Schmidt, 177 US 230 at 236, (1899) as cited in Simon v Craft, 182 US 427 at 436, (1900); In Re Summers, 325 US at 567, (1944) citing Nashville C&RR v Wallace, 288 US 239 at 249, (1918); Central Vermont RR v White, 238 US 507 at 511, (1914) as cited in US v Obermeier, 186 F2d 243, (1950);*— Page 25,

"..... [d]ue process of law guaranteed by the 14th Amendment has regard to substance of right and not to matters of form and procedure . . . the entire course of proceedings, and not merely one step, must be considered" ***Frank v Mangum, 237 US 309, (1916);***— Page 25,

"[W]hile technical rules of pleading are maintained to protect rights of parties, under the code system technical rules should not be used to defeat the ends of Justice." *Catron vs Jones, 135 SW2d 419, (1940); Roe v Gentry, 162 SW2d 208 at 210, (1942); Jordan v Olive Hill, 162 SW2d 229 at 231, (Ky 1942); Logan v Bradford, 178 SW2d 607, (Ky 1944); Stivers v Baker, 9 SW 491 at 492, (Ky 1888); Ashland Oil v Hudson, 275 SW2d 585, (Ky 1955); Maggard v Johnson, 229 SW2d 764, (Ky 1950); McBride v Moss, 437 SW2d 726, (1969);*— Pages 25, 26,

Here again our *Federal Law* and the *Alabama Constitution* and our Law states: "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of Law;

and right and justice shall be administered without sale, denial, or delay".
—Page 26,

"In reviewing the district court's grant of summary judgment we must review the evidence and all reasonable factual inferences in the light most favorable to the party opposing the motion. *See Welch v. Celotex Corp., 951 F.2d 1235, 1237 (11th Cir.1992);*—Pages 26, 27,

"When a party's credibility has been called into question "which at the "summary judgment" is inappropriate, because it is for the trier of fact to decide which story is to be believed." *Barbour v. Merrill, 48 F.3d 1270, 1277 (D.C.1995).*—Page 27,

"Although this evidence does not rebut directly AIGCS's allegations regarding Chapman's interviewing skills, the plaintiff's ability to call into question the credibility of the defendant's stated objective criteria presented to explain its business decision is, at the summary judgment stage, sufficient to cast doubt on the defendant's subjective justifications as well." *See Combs, 106 F.3d at 1537*— Page 27,

"A defendant who puts forward only reasons that are subject to reasonable disbelief in light of the evidence faces having its true motive determined by a jury."). *As quoted in Chapman v. AI Transport, Nos. 97-8838, 97-9086 and 97-9269, United States Court of Appeals, Eleventh Circuit, July 13, 1999.*—Page 27,

"Because Plaintiff is pro se, the Court will consider factual averments (declarations or assertions) in his responses as evidence to the extent that they are not contradicted by other sworn testimony of Plaintiff." *See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991)*—Page 27,

"allegations presented in a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers." *(Memorandum Opinion at 2 n.2) (citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10, 1996), "Furthermore, "a court must assume a pro se plaintiff's factual allegations are true and construe his claim liberally."*—Page 27,

**Rules of Procedure 56 were not appropriate in this case involving a Pro'se Litigant.** Courts must accord "special attention" to Pro'se litigants faced with summary judgment motions. *Ham v. Sith, 653 F.2d 628 (D.C.Cir.1981)* "At the base of this skepticism has been the suspicion that summary judgment "borders on denial of due process in that it denies the opposing party his day in court." *Olson v. Auto Owners Insurance Company, 700 SW 2d 882, 884, (MO App.E.D. 1985) (C. 389 #1)*—Page 27,

Although the Eighth Amendment is usually reserved for Criminal Litigants, "Cruel and Unusual Punishment" also applies in this Civil Case - See English Bill of Rights of 1689.--Page 27,

*As one of the Fourteenth Amendment's authors, Senator Jacob M. Howard of Michigan, declared;* "It establishes equality before the law, and it gives, to the humblest, the poorest, the most despised...the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or those most haughty...Without this principle of equal justice to all men and equal protection under the shield of the law, there can be no republican government and none that is really worth maintaining."—Page 10,

"The denial of an appeal which is brought under the Rules of Civil Procedure is a constitutional deprivation and a denial of access to the court when it is denied in an unreasonable and arbitrary manner. "..." [i]n this court the state admits, as it must, that a discriminatory denial of the statutory right of appeal is a violation of *the equal protection clause of the 14th Amendment "....." Cochran v Kansas, 316 US 255, as cited in*

*Dowd v Cook, U S, 340 US 206 at 208 (1950); Harper v Va Board of Elections, 383 US 663 at 673, (1966)* ***Black J.*** "[d]istinctions and discriminations which violate Equal Protection class are irrationality; irrelevant; unreasonable; arbitrary; invidious; – -Pages 14, 15,

".....[a]ny . . . state statute - must be applied uniformly . . . . . ; otherwise the Equal Protection clause of the 14th Amendment is violated." *Regan v NY, 349 US 58 at 66, (1954).*—Page 15,

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Appendix L

Request for Suspension of Rules and Leniency as Allowed by Rule and Law due to the Extraordinary Circumstances that the Involuntary Pro'se Litigant has been forced into was repeatedly filed but not acknowledged by the Court's in Alabama.

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA CIVIL APPEALS AND NOW ON APPEAL TO THE ALABAMA SUPREME COURT**

Rule # 2 – Suspension of the Rules. The Plaintiff/Appellant has requested assistance of counsel on numerous occasions. The Court and the Bar Associations in Alabama have failed to assist Tidwell in her request for counsel (The Alabama

State Bar is still actively seeking to assist Tidwell with her repeated request for counsel- See attached Exhibit # 1). Lack of counsel and funds has severely prejudiced Tidwell's rights. Tidwell lost all wages and has had to pay well over $30,000 for her own medical needs. Her only "crime" was the she was injured on her job and had to hire an attorney to claim what she was entitled to in the first place. Her attorney advised her of the legal strategy and then he failed to carry out his own plan and did not advise Tidwell what had occurred during the handling of her claim, which was an undisclosed conflict of interest. The original Defendant's attorney will even acknowledge that the failure of Tidwell's attorneys to enter evidence did effect the outcome of her worker's compensation case (See Exhibit 2). Tidwell does want the Court to note that she requested that the Court apply ARAP Rule # 2 - The Suspension of Rules, in case she unknowingly, incorrectly applies, and/or deletes a step in the Appellate Process. The Plaintiff/Appellant Tidwell wants the Court to know that she is trying very hard to comply with the complicated rules but she is not an attorney. She knows that she is ineffective as her own counsel and has repeatedly attempted to receive services from a legal service provider and the Alabama State Bar is continuing to attempt to assist her with this dilemma. The application of Rule # 2 - The Suspension of the Rules was not and is not now being requested where Tidwell can totally ignore the Rules of Procedure. Tidwell is making a genuine and sincere attempt to comply to all of the "legal rules", just as she informed the Court at the time the Appeal was filed. The legislative intent of any Law is for justice to be served and to have that case determined on the merits of the case, not who can follow the rules of procedure the best. Tidwell does understand the general concept of the legal rules and she is trying very hard to follow them. She is not an attorney and she has no rights to legal counsel and the Rules of Appellate Procedure is complicated, especially when she is a high school graduate with no legal guidance.

2. At the time that the Notice of Appeal was filed, being extra cautious and unsure of all of the rules and regulations, Tidwell had the Clerk handling the Appeals in Jefferson County "look over" the forms that she had been given to fill out to make sure that all sections that she needed to complete was filled out. This was done in the presence of a witness. Tidwell was not seeking advice of the Clerk, she simply ask her if she had completed the necessary information before it was filed. The Clerk informed Tidwell that she had completed the sections that applied to her case. Tidwell can do no more. A closer review of ARAP. 2 a (c) notes:

"When an appellate court, on motion of a party, or on its own motion, shall determine that a party is obviously failing to prosecute the appeal (C), or has substantially failed to comply with these rules (D), the appellate court shall cause notice to be sent to the party in default, notifying the party, in general terms, of the deficiency. If the party in default fails to correct the deficiency prior to submission, or within such time as the appellate court shall direct, the appellate court may dismiss the appeal. The attorney for the party in default has the burden to correct promptly any deficiency or to see that the default is corrected by the appropriate official."

If Tidwell's Appeal is in any way deficient, she will immediately correct any deficiency that the Court informs her needs to be corrected.

3. In the Defendant's/Appellee's Motion for Dismissal, they state that the Appellant failed to give security for cost as required under ARAP. 7. The Defendant/Appellee next states that ARAP 7, does allow for an exemption by law or rule but the Appellant does not qualify for either exemptions and has stated no reason for qualifying for this exemption. At the time that the Notice of Appeal was filed, the Plaintiff/Appellant did request for the application of ARAP 2 - The Suspension of Rules as detailed above. Due to the extraordinary circumstances, Tidwell has already requested

that she be granted an "exception to the rule". Since Tidwell is not an attorney, she can not be advised on how to file security for costs or supersedeas bond, nor does she know what they mean. The ARAP 2 states:

**(b) Suspension of Rules.** In the interest of expediting decision, or for other good cause shown, an appellate court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction; provided, however, an appellate court may not extend the time for taking an appeal, as provided in Rule 4(a)(1);

Due to the above extraordinary circumstances and events, the Plaintiff/Appellant Tidwell request that this Court notify her if they consider her Appeal to be in any way deficient and the necessary corrections will be made immediately. She also request (as she did at the time the Notice of Appeal was filed), that the Suspension of Rules be applied in this case because she has no rights to an attorney, although she desires to be represented. She has been informed that her issues will be a monumental task to straighten out and unfortunately, other attorneys do not have the time to help her. Any future medical care is in question and the Plaintiff/Appellant Tidwell should not be punished with a "life sentence" of no wages or medical care because she has been denied adequate legal counseling. This Defendant/Appellee left Tidwell with no resolution to the question of her past, present, and/or future medical care and Tidwell is still being harassed by her former employer's "self funded" medical care provider for payment for injuries that she received on the job (last statements in March and April of 2002). This case is so extraordinary that the original Defendant's attorney, Mr. Craig Alexander, has filed an affidavit in this case (See Exhibit # 3) and The Honorable Judge Boohaker accepted this affidavit into evidence in the "best interest of justice". Alabama Rules of Appellate

Procedure declares that the Rules will be construed to assure the just, speedy and inexpensive determination of every appellate proceeding.

**SECOND REQUEST**
**MOTION TO APPLY RULES 2 AND 7 OF THE ALABAMA RULES OF APPELLATE PROCEDURE TO THE ABOVE MENTION CASE BEING SUBMITTED FOR APPEAL TO THE ALABAMA SUPREME COURT DUE TO EXTRAORINIARY CIRCUMSTANCES AND IN THE BEST INTEREST OF JUSTICE**

1. The Plaintiff/Appellant Tidwell filed a Notice of Appeal in the above case in the time allowed by Law. The Notice of Appeal and the $100.00 filing fee was received by the Appellate Clerk in the Jefferson County Courthouse to commence the appellate process. At the time that this Appeal was timely filed, Tidwell noted that due to circumstances beyond her control, she requested in writing that this Court apply ARCP – Rule # 2 – Suspension of the Rules. The Plaintiff/Appellant has requested assistance of counsel on numerous occasions. The Court and the Bar Associations in Alabama have failed to assist Tidwell in her request for counsel (The Alabama State Bar is still actively seeking to assist Tidwell with her repeated request for counsel– See attached Exhibit # 1). Lack of counsel and funds has severely prejudiced Tidwell's rights. Tidwell lost all wages and has had to pay well over $30,000 for her own medical needs. Her only "crime" was the she was injured on her job and had to hire an attorney to claim what she was entitled to in the first place. Her attorney advised her of the legal strategy and then he failed to carry out his own plan and did not advise Tidwell what had occurred during the handling of her claim, which was an undisclosed conflict of interest. The original Defendant's attorney will even acknowledge that the failure of Tidwell's attorneys to enter evidence did effect the outcome of her worker's compensation case (See Exhibit 2). Tidwell does want the Court to note that she requested that the Court apply ARAP Rule # 2 – The Suspension of Rules, in case she

unknowingly, incorrectly applies, and/or deletes a step in the Appellate Process. The Plaintiff/Appellant Tidwell wants the Court to know that she is trying very hard to comply with the complicated rules but she is not an attorney. She knows that she is ineffective as her own counsel and has repeatedly attempted to receive services from a legal service provider and the Alabama State Bar is continuing to attempt to assist her with this dilemma. The application of Rule # 2 - The Suspension of the Rules was not and is not now being requested where Tidwell can totally ignore the Rules of Procedure. Tidwell is making a genuine and sincere attempt to comply to all of the "legal rules", just as she informed the Court at the time the Appeal was filed. The legislative intent of any Law is for justice to be served and to have that case determined on the merits of the case, not who can follow the rules of procedure the best. Tidwell does understand the general concept of the legal rules and she is trying very hard to follow them. She is not an attorney and she has no rights to legal counsel and the Rules of Appellate Procedure is complicated, especially when she is a high school graduate with no legal guidance.

2. At the time that the Notice of Appeal was filed, being extra cautious and unsure of all of the rules and regulations, Tidwell had the Clerk handling the Appeals in Jefferson County "look over" the forms that she had been given to fill out to make sure that all sections that she needed to complete was filled out. This was done in the presence of a witness. Tidwell was not seeking advice of the Clerk, she simply ask her if she had completed the necessary information before it was filed. The Clerk informed Tidwell that she had completed the sections that applied to her case. Tidwell can do no more. A closer review of ARAP. 2 a (c) notes:

"When an appellate court, on motion of a party, or on its own motion, shall determine that a party is obviously failing to prosecute the appeal (C), or has substantially failed to comply with these rules (D), the appellate court shall cause

notice to be sent to the party in default, notifying the party, in general terms, of the deficiency. If the party in default fails to correct the deficiency prior to submission, or within such time as the appellate court shall direct, the appellate court may dismiss the appeal. The attorney for the party in default has the burden to correct promptly any deficiency or to see that the default is corrected by the appropriate official."

If Tidwell's Appeal is in any way deficient, she will immediately correct any deficiency that the Court informs her needs to be corrected.

3. In the Defendant's/Appellee's Motion for Dismissal, they state that the Appellant failed to give security for cost as required under ARAP. 7. The Defendant/Appellee next states that ARAP 7, does allow for an exemption by law or rule but the Appellant does not qualify for either exemptions and has stated no reason for qualifying for this exemption. At the time that the Notice of Appeal was filed, the Plaintiff/Appellant did request for the application of ARAP 2 - The Suspension of Rules as detailed above. Due to the extraordinary circumstances, Tidwell has already requested that she be granted an "exception to the rule". Since Tidwell is not an attorney, she can not be advised on how to file security for costs or supersedeas bond, nor does she know what they mean. The ARAP 2 states:

**(b) Suspension of Rules.** In the interest of expediting decision, or for other good cause shown, an appellate court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction; provided, however, an appellate court may not extend the time for taking an appeal, as provided in Rule 4(a)(1);

Due to the above extraordinary circumstances and events, the Plaintiff/Appellant Tidwell request that this

Court notify her if they consider her Appeal to be in any way deficient and the necessary corrections will be made immediately. She also request (as she did at the time the Notice of Appeal was filed), that the Suspension of Rules be applied in this case because she has no rights to an attorney, although she desires to be represented. She has been informed that her issues will be a monumental task to straighten out and unfortunately, other attorneys do not have the time to help her. Any future medical care is in question and the Plaintiff/Appellant Tidwell should not be punished with a "life sentence" of no wages or medical care because she has been denied adequate legal counseling. This Defendant/Appellee left Tidwell with no resolution to the question of her past, present, and/or future medical care and Tidwell is still being harassed by her former employer's "self funded" medical care provider for payment for injuries that she received on the job (last statements in March and April of 2002). This case is so extraordinary that the original Defendant's attorney, Mr. Craig Alexander, has filed an affidavit in this case (See Exhibit # 3) and The Honorable Judge Boohaker accepted this affidavit into evidence in the "best interest of justice". Alabama Rules of Appellate Procedure declares that the Rules will be construed to assure the just, speedy and inexpensive determination of every appellate proceeding.

**CONCLUSION:** The Alabama Rules of Appellate Procedure declares that the Rules will be construed to assure the just, speedy and inexpensive determination of every appellate proceeding. The Plaintiff/Appellant Tidwell is requesting that the above be applied to ensure her a just, speedy, and inexpensive review of her appeal, which she is entitled to by Law.

**Certificate of Service**

I hereby certify that I have mailed a copy of the above by United States Mail on the 27th, day of April, 2002 to the Defendant's/Appellee's Counsel addressed above.

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Appendix M – Documents Submitted to the Trial Court on page 20.

Appendix N – Alternatives to Expert Witness Testimony

Appendix O – New Ruling of Law since Trial Court's Opinion and the Alabama Court of Civil Appeals No Opinion decision but before the No Opinion ruling by the Alabama Supreme Court that ruled totally different in the cited case below:

On November 27, 2002 the Alabama Supreme Court Overruled Mandatory expert witness testimony. The Petitioner filed a Motion December 30, 2002 informing the Supreme Court that this was exactly what denied her day in Court. The Supreme Court of Alabama did not respond to her motion and on March 28, 2003 the Alabama Supreme Court denied my Petition with No Opinion even though they themselves had overruled the trial court's mandatory expert witness testimony in my case's opinion. I had the original opposing counsel's affidavit and the record from the underlying case, as well as the substantial evidence in the record, as well as any layperson could understand that attorney's have to enter the evidence into the record before the Judge makes his ruling. This was also a violation of my 14th Amendment Rights. In addition, the ruling held in my case was also in conflict with other state courts of last resort (deceit does not require expert witness testimony and was allowed to go to the jury) and also against the legal precedent set by the United States Supreme Court applicable to the Pro'se Litigant.

**SUPREME COURT OF ALABAMA**

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**OCTOBER TERM, 2002-2003**

**1011582**

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**Ex parte HealthSouth Corporation d/b/a HealthSouth Lakeshore Rehabilitation Hospital**

**PETITION FOR WRIT OF CERTIORARI**

**TO THE COURT OF CIVIL APPEALS**

**(In re: Sharon Heath and Thurman Heath**

**v.**

**HealthSouth Medical Center)**

**(Jefferson Circuit Court, CV-00-1700;**

**Court of Civil Appeals, 2000807)**

LYONS, Justice.

The defendant, HealthSouth Corporation d/b/a HealthSouth Lakeshore Rehabilitation Hospital("HealthSouth"), petitioned this Court for a writ of certiorari to review whether the Court of Civil Appeals erred in reversing the summary judgment in favor of HealthSouth and against the plaintiffs Sharon Heath and Thurman Heath. See Heath v. HealthSouth Med. Ctr., [Ms. 2000807, May 3, 2002] ___ So. 2d ___ (Ala. Civ. App. 2002). We granted certiorari review. For the reasons discussed below, we affirm the judgment of the Court of Civil Appeals.

Facts and Procedural History

"[Sharon] Heath had been admitted to the HealthSouth facility for back surgery. After her surgery, which was successfully performed, Heath was transferred to the rehabilitation section of the facility. Immediately before her transfer and before she left the surgical ward on November 21, 1999, she was given 5 milligrams ('mg.') Valium, 10 mg. morphine, and a Percodan tablet. Shortly after arriving at the rehabilitative floor of the facility, she received a second Percodan tablet. The Percodan was supposed to be given at four-hour intervals, but Heath received the second Percodan tablet 2 hours and 45 minutes after she had taken the first one. In addition, Heath did not receive a scheduled dose of her insulin. [Heath is an insulin-dependent diabetic.] Heath's assigned nurse at the rehabilitative unit, Kathy Reid, an L.P.N. and a new employee working her first day on the rehabilitation unit, raised two side rails (one rail on each side of the bed) of the four side rails on Heath's bed and left her with a buzzer near her hand.

"Heath testified in her deposition that, shortly after she received the second Percodan tablet, she needed to use the bathroom, and she rang the buzzer to summon a nurse. Heath said that after she rang the buzzer, she waited 'anywhere from 30 minutes to an hour' for a nurse to come and assist her to the bathroom. The evidence as to whether the nurses were aware of the activation of Heath's buzzer or whether the buzzer was actually working is disputed. Heath testified that, although she knew that her doctor had instructed her not to get up from her bed without the assistance of a nurse, she was unable to wait any longer and she began to climb out of bed by herself. Heath said that when she put weight on her left foot, it gave way and she fell, breaking her left hip. She immediately underwent surgical open reduction and internal fixation of the left intertrochanteric fracture.

"On March 20, 2000, the Heaths sued HealthSouth, and various fictitious defendants, alleging that the defendants had breached the standard of care in providing care and

treatment for Heath while she was a patient in the facility. Specifically, they alleged that the defendants (1) had failed to identify Heath as a patient 'at risk' for falling, (2) had failed to properly supervise and monitor Heath while she was being treated in the facility, (3) had failed to train its nursing staff on safety issues, and (4) had failed to respond to Heath's calls for assistance.

"On February 20, 2001, HealthSouth moved for a summary judgment, stating as grounds that no genuine issue of material fact existed as to the defendants' breach of the standard of care. HealthSouth supported its motion with the affidavit of Lola Patterson, R.N. On March 1, 2001, the Heaths responded to HealthSouth's summary-judgment motion with the affidavit testimony of Julie Akin, R.N. On March 2, 2001, HealthSouth submitted a supplemental affidavit of Ms. Patterson that was substantially the same as the initial affidavit, along with a certified copy of Heath's medical records from her November 1999 hospital stay at HealthSouth. Shortly thereafter, HealthSouth moved to strike Ms. Akin's affidavit, contending that she was not a qualified expert pursuant to the Alabama Medical Liability Act, § 6-5-548, Ala. Code 1975, which requires that the health-care expert have practiced in the same discipline as the health-care-provider defendant 'during the year preceding the date that the alleged breach of standard of care occurred.' § 6-5-548(b)(3). The trial court determined that Ms. Akin did not meet those requirements, struck her affidavit, and granted HealthSouth's summary-judgment motion.

"The Heaths filed a post-judgment motion, which the trial court denied. ... On appeal, the Heaths argue[d] that the trial court erred by striking the testimony of their expert, Julie Akin, R.N., on the grounds that it did not comply with § 6-5-548. They also argue[d] that expert testimony was not necessary in this case to establish the applicable standard of care and the breach of that standard."Heath, ___ So. 2d ___ (footnotes omitted). The main opinion of the Court of Civil Appeals held that § 6-5-548, Ala. Code 1975, a part of the

Alabama Medical Liability Act ("AMLA"), requires expert testimony to prove how HealthSouth breached its duty to Heath, who alleges she was a patient "at risk" for falling, and how this breach caused Heath's injury. However, that opinion also held that expert testimony was not needed to prove that HealthSouth breached its duty of care to Heath when its nursing staff allegedly failed to respond to her calls for assistance, which failure proximately caused Heath's injuries. The Court of Civil Appeals reversed the summary judgment.

Standard of Review

The principles of law applicable to the review of a motion for a summary judgment are well settled. The party moving for a summary judgment must make a showing that the evidence does not raise a genuine issue of material fact and that the movant is entitled to the judgment as a matter of law. Rule 56(c)(3), Ala. R. Civ. P. When the movant has made a prima facie showing that those two conditions are satisfied, the burden then shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). Evidence is "substantial" if it is of "such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989).

In reviewing a summary judgment, we apply the same standard the trial court applied. Ex parte Lumpkin, 702 So. 2d 462, 465 (Ala. 1997). Our review is subject to the caveat that we must review the record in a light most favorable to the nonmovant and must resolve all reasonable doubts against the movant. Hanners v. Balfour Guthrie, Inc., 564 So. 2d 412, 413 (Ala. 1990).

Analysis

HealthSouth argues that the main opinion of the Court of Civil Appeals incorrectly held that "no expert testimony was required to establish that HealthSouth breached its duty of care with respect to Heath's allegation that HealthSouth's nursing staff failed to respond to her calls for assistance in walking to the bathroom and that, as a proximate consequence of that failure, Heath attempted to walk to the bathroom by herself, fell, and was injured." Heath, ___ So. 2d at ___. The court relied upon a Vermont case, Newhall v. Central Vermont Hosp., Inc., 133 Vt. 572, 349 A.2d 890 (1975), in reaching that conclusion. In Newhall, the Supreme Court of Vermont held that a patient is not required to present expert testimony as to the unreasonableness of delay in answering a call light, because the alleged lack of care related to matters that were reasonably within the knowledge and experience of the average layperson. Id. However, HealthSouth argues that Newhall is inapplicable because Vermont does not have a statute comparable to § 6-5-548.

HealthSouth also contends that the Court of Civil Appeals' holding is in conflict with Anderson v. Alabama Reference Laboratories, 778 So. 2d 806 (Ala. 2000), and the cases upon which Anderson relies. In Anderson, this Court stated:

"As a general rule, in a medical-malpractice action, the plaintiff is required to produce expert medical testimony to establish the applicable standard of care and a breach of that standard of care, in order to satisfy the plaintiff's burden of proof. See Allred v. Shirley, 598 So. 2d 1347, 1350 (Ala. 1992) (citing Tuscaloosa Orthopedic Appliance Co. v. Wyatt, 460 So. 2d 156, 161 (Ala. 1984)). However, '[a]n exception to this rule exists "in a case where want of skill or lack of care is so apparent ... as to be understood by a layman, and requires only common knowledge and experience to understand it."' Wyatt, 460 So. 2d at 161 (quoting Dimoff v. Maitre, 432 So. 2d 1225, 1226-27 (Ala. 1983)). This Court has recognized the following situations as falling within this exception:

"'"1) where a foreign instrumentality is found in the plaintiff's body following surgery; 2) where the injury complained of is in no way connected to the condition for which the plaintiff sought treatment; 3) where the plaintiff employs a recognized standard or authoritative medical text or treatise to prove what is or is not proper practice; and 4) where the plaintiff is himself or herself a medical expert qualified to evaluate the doctor's allegedly negligent conduct.'" "Allred, 598 So. 2d at 1350 (quoting Holt v. Godsil, 447 So. 2d 191, 192-93 (Ala. 1984) (citations omitted in Allred))." 778 So. 2d at 811. HealthSouth argues that because the Heaths did not present expert testimony and because their claim does not fall within any of the four circumstances enumerated in Anderson, the trial court properly entered a summary judgment for HealthSouth.

HealthSouth points to this Court's decision in Loeb v. Cappelluzzo, 583 So. 2d 1323 (Ala. 1991), to support its argument that the failure to fit within one of the four categories listed in Anderson is fatal to the Heaths' claim. In Loeb, a patient at a doctor's office arose from a swivel stool when her doctor entered the examination room. In the process, she fell and injured herself. Loeb argued that her claim was "within the exception to the general rule requiring expert testimony" because, she claimed, the facts were such that an average person could understand the malpractice without expert testimony. Loeb, 583 So. 2d at 1325. This Court disagreed, finding that the exception to the general rule requiring expert testimony is reserved for limited situations such as when a foreign instrument is left in a patient's body following surgery or when injuries occur to the body remote from the area of operation. Id.

The Court of Civil Appeals distinguished Loeb, paraphrasing the following language from Loeb: "The parties agreed that the case would be tried under the [AMLA], which, because of the pre-trial order, established the standard of care owed to the patient in this case, and requires that the community standard of due care

established by that particular Act be proven by expert medical testimony." 583 So. 2d at 1326; see Heath, ___ So. 2d at ___. In this case, the Heaths had not agreed that their claim would be tried only under the AMLA; consequently, the court found that Loeb did not preclude the Heaths' use of the exception to the rule requiring expert testimony.

HealthSouth counters that the court's attempt to distinguish this case from Loeb is misplaced. While the court's rationale for distinguishing Loeb may reasonably be questioned, we nevertheless have reservations about concluding from Loeb that Anderson's four narrow categories of exceptions to the general rule are an exclusive list, requiring expert testimony in all other medical-malpractice scenarios. An impermissibly restrictive standard can be avoided by a reformulation of the rule.

As previously stated, evidence of medical malpractice generally must be proven by expert testimony. A narrow exception to this rule exists "'in a case where want of skill or lack of care is so apparent ... as to be understood by a layman, and requires only common knowledge and experience to understand it.'" Tuscaloosa Orthopedic Appliance Co. v. Wyatt, 460 So. 2d 156, 161 (Ala. 1984)(quoting Dimoff v. Maitre, 432 So. 2d 1225, 1226-27 (Ala. 1983), quoting in turn Lloyd Noland Found., Inc. v. Harris, 295 Ala. 63, 66, 322 So. 2d 709, 711 (1975)). In Anderson, this Court illustrated this exception by listing the following examples: 1) where a foreign object, such as a sponge, remains in a patient's body after surgery; 2) where the injury is unrelated to the condition for which the plaintiff sought treatment; 3) where a plaintiff relies on an authoritative medical treatise to prove what is or is not proper; and 4) where the plaintiff himself or herself is a medical expert. Anderson, 778 So. 2d at 811.

A review of those examples reveals that only the first and second examples relate to that category of cases where want of skill or lack of care is so apparent as to be understood by a

layperson, and "requires only common knowledge and experience to understand it." Wyatt, 460 So. 2d at 161. Examples three and four have nothing to do with evidence within the common knowledge of the jury and therefore do not illustrate that category of cases. For this reason alone, reformulation of the statement of the exception to the general rule requiring expert testimony is warranted.

In reviewing the Heaths' claim under the current formulation, example one is factually inapplicable. One might argue that example two could be interpreted in such a way as to encompass the facts presented by this case, but in most cases, this example applies when a doctor operates on the wrong member of the body. Moreover, Heath's injury is related to her treatment. As previously noted, examples three and four have nothing to do with an exception for matters within the common knowledge of a layperson. Thus, if the examples listed in Anderson as exceptions to the general rule are considered to be exhaustive, the Heaths would have been required to present expert testimony to survive HealthSouth's motion for a summary judgment.

Such a restrictive result would not be consistent with an application of the general statement of the exception "'where want of skill or lack of care is so apparent' that only "'common knowledge and experience'" are required to evaluate the plaintiff's allegations. Wyatt, 460 So. 2d at 161. It would also offend common sense to require the Heaths to use an expert to aid the jury in determining whether the nurses breached the standard of care by completely ignoring for 30 minutes to an hour a call for assistance by a patient who has just returned from the surgical ward following back surgery and who was under orders not to get out of bed.

In situations other than those involving medical care, it is obvious that no expert testimony would be required regarding an alleged disregard of a call for assistance. For example, if an ambulance company did not respond to a call for assistance or a gas company did not respond to a report

of a gas leak and injuries resulted from their failure to respond, expert testimony would not be a prerequisite for a plaintiff to meet his or her burden of proof. More should not be required of the Heaths simply because their claim arose on the premises of a hospital.

Accordingly, we reformulate the exception to the rule, as interpreted by Loeb, to recognize first, a class of cases "'where want of skill or lack of care is so apparent ... as to be understood by a layman, and requires only common knowledge and experience to understand it,'" Wyatt, 460 So. 2d at 161 (quoting Dimoff v. Maitre, 432 So. 2d 1225, 1226-27 (Ala. 1983)), such as when a sponge is left in, where, for example, the wrong leg is operated on, or, as here, where a call for assistance is completely ignored for an unreasonable period of time. A second exception to the rule requiring expert testimony applies when a plaintiff relies on "'"a recognized standard or authoritative medical text or treatise,"'" Anderson, 778 So. 2d at 811, or is himself or herself a qualified medical expert.

Other jurisdictions use similar formulations in medical-malpractice cases. In McGraw v. St. Joseph's Hospital, 200 W. Va. 114, 488 S.E.2d 389 (1997), the Supreme Court of West Virginia reversed a summary judgment for the defendant, holding that the plaintiff was not required to present expert testimony to survive the defendant's summary-judgment motion. The court found that despite the general rule requiring expert testimony in medical-malpractice cases, an exception to the rule applied in McGraw. The court relied on the rationale used by jurisdictions that do not generally require expert testimony in hospital-fall cases:

"'Courts generally make a distinction between medical care and custodial care or routine hospital care. The general rule is that a hospital must in the care of its patients exercise such ordinary care and attention for their safety as their mental and physical condition, known or should have been known, may require. ... If the patient requires professional nursing or

professional hospital care, then expert testimony as to the standard of that type of care is necessary. ... But it does not follow that the standard of all care and attention rendered by nurses or by a hospital to its patients necessarily require proof by expert testimony. The standard of nonmedical, administrative, ministerial or routine care in a hospital need not be established by expert testimony because the jury is competent from its own experience to determine and apply such a reasonable-care standard.'"

McGraw, 200 W. Va. at 121, 488 S.E.2d at 396 (quoting Cramer v. Theda Memorial Hospital, 45 Wis. 2d 147, 149-50, 172 N.W.2d 427, 428 (1969)(citations omitted) (emphasis added in McGraw)). In this case, the nurse's responsibility to respond to Heath's call for assistance clearly falls within the category of routine hospital care. A jury could use "common knowledge and experience" to determine whether the standard of care was breached in this case, where custodial care, not medical care, is at issue.

HealthSouth argues that McGraw should not be relied upon because West Virginia does not have a statutory scheme like the AMLA, which has been construed to require expert testimony in medical-malpractice actions. In McGraw, the court interpreted the relevant West Virginia statute, W. Va. Code § 55-7B-7 (1986), to mean that trial courts had the discretion to not require expert testimony in all medical-malpractice cases. The court came to this conclusion, despite the statute's explicit language calling for expert testimony (language not found in our statute), because of previous caselaw that allowed for an exception to the general rule. See Neary v. Charleston Area Med. Ctr., 194 W. Va. 329, 334, 460 S.E.2d 464, 469 (1995) (the court affirmed the summary judgment because the issues involved were complex and required expert testimony; however, the court recognized that expert testimony would not have been necessary in

order for the plaintiff to survive a summary-judgment motion if the doctrine of res ipsa loquitor had applied).

HealthSouth contends that the AMLA leaves no room for such discretion by trial courts, and that medical-malpractice cases such as this one can survive the summary-judgment phase only if expert testimony is presented. HealthSouth is correct that the AMLA requires expert testimony in medical-malpractice cases, but this Court has recognized exceptions to that rule, when medical expertise is not necessary to prove the plaintiff's case, such as here when nurses have failed to respond to a routine, custodial call from a patient. HealthSouth itself points to cases in the line of Anderson and Loeb recognizing that circumstances exist that would make expert testimony unnecessary. In fact, Loeb acknowledged, like McGraw, that in a situation where res ipsa loquitor would apply, expert testimony would not be needed. Loeb, 583 So. 2d at 1325. Although res ipsa loquitor is not applicable in this case, this Court has gone further and said that where "the want of skill or lack of care is so apparent as to be within the comprehension of the average layman and thus requires only common knowledge and experience to understand, no expert medical testimony is necessary." Bell v. Hart, 516 So. 2d 562, 566 (Ala. 1987). This Court recognized that this exception "has usually been applied" where res ipsa loquitor is applicable or where the injury is not "connected to the condition for which the plaintiff sought treatment," 516 So. 2d at 566 (emphasis added), but this language does not require the conclusion that these are the only two circumstances in which a layperson would have common knowledge sufficient to understand whether the standard of care has been breached.

In Bell, the plaintiff sued her doctor, alleging that he had negligently prescribed an antidepressant. This Court determined that the trial court had not erred in excluding the Bells' expert witnesses and finding that the absence of expert testimony precluded their medical-malpractice claim. 516 So. 2d at 570. In reaching this conclusion, the Court evaluated

whether the facts were within the understanding of a layperson; it concluded that they were not. However, this Court also opined in dicta, distinguishing Dimoff, that while a medical-malpractice action based on a doctor's prescribing antidepressants would require expert testimony, a layperson could conceivably comprehend the standard of care "applicable to the taking of dental impressions with a plaster-like substance," which was the case in Dimoff. 516 So. 2d at 568. Just as the circumstance recognized in dicta by Bell does not require expert testimony, neither does a nurse's failure to respond to routine calls for assistance fall outside the "common knowledge and experience" of the jury.

HealthSouth contends that allowing "patient monitoring standards" to be within a layperson's "common knowledge" opens the door for cases that should be evaluated as medical- malpractice cases to be treated as simple negligence cases. HealthSouth points to "factually complex decisions" that would then be submitted to juries without the requisite assistance from medical experts. HealthSouth suggests in its brief to this Court that such decisions could arise in the following scenarios:

"What if there is an emergency on the floor? What if the call light is not working or is improperly used by the patient? And, if an alleged thirty-minute delay is somehow within the understanding of laypeople for purposes of assessing liability, what then of fifteen minutes? Or five? Or one? ... [W]hat about issues of causation, such as where, as here, HealthSouth's expert testified that the plaintiff's own conduct (i.e., failing to follow her physician's orders about not getting out of bed) was the actual cause of the injury?"

This argument is not persuasive. All of the above scenarios are routinely determined by juries in all types of cases without the aid of an expert. A layperson does not need an expert to assist him or her in understanding that an emergency on the floor could cause a delay or that a one-minute delay could be reasonable, for example, when the

nurses' desk is two minutes from the patient's room. As to causation, it is clear that Heath's injuries occurred because she got out of the hospital bed and fell. A jury can certainly weigh the facts in determining causation, be they a nurse's failure to respond within a 30-minute time frame or a doctor's order to stay in bed. We do not see why a medical expert would be necessary to establish that Heath's failure to follow doctor's orders -- by getting out of bed and injuring herself -- was the result of the failure to respond to a call for assistance for an unreasonable period. In this case, where the issue is whether a nurse breached the standard of care by not responding to a routine call within a 30-minute period, laypersons could answer all of the aforementioned hypotheticals by using their "common knowledge and experience." We do not see how an expert would be necessary to testify as to the "medical standards" involved.

The Chief Justice's dissent takes the majority to task for its failure to adhere to the text of the AMLA. The Chief Justice, apparently unfettered by the stricture of stare decisis, condemns in his dissent the recognition of exceptions to the rule that allegations of medical malpractice generally must be proven by expert testimony. The exceptions discussed in this opinion have long been recognized by this Court. See Sellers v. Noah, 209 Ala. 103, 95 So. 167 (1923) (foreign instrumentality found in plaintiff's body after surgery); Parrish v. Spink, 284 Ala. 263, 224 So. 2d 621 (1969) (injury complained of is in no way connected to condition for which plaintiff sought treatment); Zills v. Brown, 382 So. 2d 528 (Ala. 1980) (plaintiff uses recognized standard or authoritative medical text or treatise to prove proper practice); Lamont v. Brookwood Health Servs., Inc., 446 So. 2d 1018 (Ala. 1983) (plaintiff is himself or herself a medical expert qualified to evaluate allegedly negligent conduct). After the Legislature supplemented the AMLA by enacting the Medical Liability Act of 1987, this Court continued to recognize those exceptions on numerous occasions. See, e.g., Anderson, supra, 778 So. 2d at 811; Dews v. Mobile Infirmary Ass'n, 659 So. 2d 61, 63 (Ala. 1995); Murray v.

Alonso, 649 So. 2d 1268, 1270 (Ala. 1994); Henson v. Mobile Infirmary Ass'n, 646 So. 2d 559, 562 (Ala. 1994); Jones v. Bradford, 623 So. 2d 1112, 1115 (Ala. 1993); Allred v. Shirley, 598 So. 2d 1347, 1350 (Ala. 1992); and Bates v. Meyer, 565 So. 2d 134, 136 (Ala. 1990). Moreover, the Legislature amended the AMLA in 1996 (§§ 6-5-548, -549, and -549.1) and again in 2000 (§ 6-5-551) without altering the effect of the cases that serve as precedent for today's decision. Presumably, when the Legislature reenacts or amends a statute without altering language that has been judicially interpreted, it adopts a particular judicial construction. Hall v. Chi, 782 So. 2d 218, 222-23 (Ala. 2000). Therefore, we can presume that the exceptions recognized in this opinion are in fact consistent with legislative intent.

Conclusion

A plaintiff need not offer testimony of an expert witness in a medical-malpractice case (a) when the act or omission is in a class of cases "'where want of skill or lack of care is so apparent ... as to be understood by a layman, and requires only common knowledge and experience to understand it,'" Wyatt, 460 So. 2d at 161 (quoting Dimoff v. Maitre, 432 So. 2d 1225, 1226-27 (Ala. 1983)), such as when a foreign object is left in, the wrong body part is operated on, or a call for assistance is ignored for an unreasonable time; or (b) when a plaintiff either relies on "'"a recognized standard or authoritative medical text or treatise,"'" Anderson, 778 So. 2d at 811, or is himself a qualified medical expert. To the extent Loeb and other cases to like effect are in conflict, they are hereby overruled.

We affirm the judgment of the Court of Civil Appeals reversing the summary judgment for HealthSouth.

AFFIRMED.

Houston, Johnstone, Harwood, and Woodall, JJ., concur.

See, J., concurs specially.

Brown and Stuart, JJ., concur in the result.

Moore, C.J., dissents.

SEE, Justice (concurring specially).

Many jurisdictions differentiate between (1) medical or technical care provided by a hospital and (2) custodial or personal care provided by the same hospital. As the Court of Civil Appeals noted when this case was before them,

"In McGraw v. St. Joseph's Hospital, 200 W. Va. [114] at 121, 488 S.E.2d [389] at 396 [(1997)], the Supreme Court of Appeals of West Virginia, quoting a Wisconsin decision, Cramer v. Theda Clark Memorial Hospital, 45 Wis. 2d 147, 172 N.W.2d 427, 428 (1969), 'articulated the rationale used by jurisdictions that generally do not require expert testimony in hospital fall cases':

'"Courts generally make a distinction between medical care and custodial care or routine hospital care. The general rule is that a hospital must in the care of its patients exercise such ordinary care and attention for their safety as their mental and physical condition, known or should have been known, may require. ... If the patient requires professional nursing or professional hospital care, then expert testimony as to the standard of that type of care is necessary. ... But it does not follow that the standard of all care and attention rendered by nurses or by a hospital to its patients necessarily require[s] proof by expert testimony. The standard of nonmedical, administrative, ministerial or routine care in a hospital need not be established by expert testimony because the jury is competent from its own experience to determine and apply such a reasonable-care standard."'" Heath v. HealthSouth Med. Ctr., [Ms. 2000807, May 3, 2002] ___ So. 2d ___, ___ (Ala. Civ. App. 2002).

In this case, I concur with the majority's decision to affirm the judgment of the Court of Civil Appeals because the Heaths' claim on which that court reversed the summary judgment does not appear to be a medical-malpractice claim, but is instead a claim alleging negligent or wanton-and-willful failure to provide requested custodial care. Because, and to the extent that, the Heaths' claims are not medical-malpractice claims, I concur that the Heaths need not show the applicable standard of care through expert medical testimony.

MOORE, Chief Justice (dissenting).

I.I respectfully dissent. Section 6-5-548(a) of the Alabama Medical Liability Act ("AMLA"), § 6-5-540 et seq., Ala. Code 1975, requires that a plaintiff in a medical- malpractice action prove that the defendant health-care provider [1] "failed to exercise such reasonable care, skill, and diligence as other similarly situated health care providers in the same general line of practice ordinarily have and exercise in a like case." (Emphasis added.) Section 6-5-548(b) defines a "similarly situated health care provider" when the health-care provider alleged to have breached the standard of care has no medical specialty, "[n]otwithstanding any provision of the Alabama Rules of Evidence to the contrary," as

"one who meets all of the following qualifications:

"(1) Is licensed by the appropriate regulatory board or agency of this or some other state.

"(2) Is trained and experienced in the same discipline or school of practice.

"(3) Has practiced in the same discipline or school of practice during the year preceding the date that the alleged breach of the standard of care occurred."

(Emphasis added.) Likewise, § 6-5-548(c) provides four

requirements a similarly situated health-care provider must meet in an AMLA action in which the health-care provider who allegedly breached the standard of care is a specialist. Moreover, if the expert who is testifying is a "health-care provider," he or she may testify against another health-care provider "based on a breach of the standard of care only if he or she is a 'similarly situated health care provider' as defined [in § 6-5-548(b) or (c)]." § 6-5-548(e). There are no exceptions in the statute for proving the applicable standard of care. Given the exact (and exacting) burden of proof a plaintiff asserting a medical-malpractice claim must meet, § 6-5-548(a), only expert testimony could establish the "relative"[2] standard of care the defendant health-care provider is held to under the AMLA.[3] But today, by its "reformulation" of this Court's judicially created exceptions to the AMLA, the majority commits two errors. First, by continuing to insert exceptions into the requirements of the AMLA, it ignores the limitations of the AMLA and the limits of this Court's own authority. Second, by adding another specific exception to the AMLA's requirements – what the Court calls "reformulating" – this Court not only expands its own judicial exceptions (and thereby shrinks the scope of the AMLA), but flouts stare decisis by contradicting its own precedent that articulated those (once limited) exceptions.

Medical malpractice was originally a matter of common law, with the attendant burdens of proof and exceptions recognized by Alabama courts, not the Legislature. See, e.g., Parrish v. Spink, 284 Ala. 263, 266-67, 224 So. 2d 621, 623-24 (1969) (listing exceptions to the general rule that proof of proper practice, treatment, and procedure in a medical-malpractice case "can be established only by expert medical evidence"). But in 1975 the Legislature passed "The Alabama Medical Liability Act," Act No. 513, Ala. Acts 1975, and in 1987 the Legislature passed "The Alabama Medical Liability Act of 1987," Act No. 87-189, Ala. Acts 1987, which supplemented the 1975 act. See § 6-5-541, Ala. Code 1975. The 1987 act, amended in 1996 and again in 2000, codified

the standards for the burden of proof in medical-malpractice actions.[4] See § 6-5-548.

Nevertheless, this Court continued to claim that the common-law exceptions to the statutory requirement of expert medical testimony in demonstrating the proper standard of care in a medical-malpractice action were still applicable, and it treated the AMLA requirement of expert testimony as merely a "general rule." See ___ So. 2d at ___; Anderson v. Alabama Reference Labs., 778 So. 2d 806, 811 (Ala. 2000); Bates v. Meyer, 565 So. 2d 134, 136 (Ala. 1990). Thus, my first disagreement with the majority is its continued disregard for the Legislature's legitimately enacted requirements in the AMLA for the burden of proof and its reliance on its own precedent, rather than on the statute, as "the original source" of the judicial exceptions it recognizes. This case presents an excellent opportunity to return to a proper and limited interpretation of § 6-5-548.

The majority defends its decision today by noting that the Legislature amended the AMLA in 1996 and again in 2000 without, the majority asserts, altering the effect of the cases the majority cites as precedent for today's decision. ___ So. 2d at ___. "Presumably, when the Legislature reenacts or amends a statute without altering language that has been judicially interpreted, it adopts a particular judicial construction." ___ So. 2d at ___, citing Hall v. Chi, 782 So. 2d 218, 222-23 (Ala. 2000). The majority presumes that "the exceptions recognized in this opinion are in fact consistent with legislative intent." ___ So. 2d at ___ (emphasis added).

First and foremost, the presumption of "legislative acquiescence," although a well-recognized rule of statutory construction, is "of limited application and is merely to aid in ascertaining the legislative intent." 82 C.J.S. Statutes § 370 (1953). "The general rule does not apply where the statute in question is unambiguous, or where the plain language of the statute expresses an intent contrary to the construction given it." Id. If this Court can ascertain the intent from the

language and history of a statute, "it is not necessary to apply any presumptions of law which will aid in the interpretation when its meaning does not otherwise appear." Long v. Poulos, 234 Ala. 149, 150, 174 So. 230, 231 (1937). See also In re Elliott's Estate, 22 Wash. 2d 334, 156 P.2d 427 (1945) (the general rule of legislative acquiescence is not conclusive, and it is applicable only where the contrary is not clearly shown by the language of the act).

The AMLA, as this Court recognizes, requires expert medical testimony to prove what a layman's testimony could not – that the defendant health-care provider "failed to exercise such reasonable care, skill, and diligence as other similarly situated health care providers in the same general line of practice ordinarily have and exercise in a like case." § 6-5-548(a). The language "is plain and unambiguous, and in such a case the Legislature should be understood to mean what [it] plainly expressed, leaving no room for construction." State v. Praetorians, 226 Ala. 259, 260, 146 So. 411, 412 (1933). "'The courts must confine themselves to the construction of the law as it is, and not attempt ... to supply defective legislation, or otherwise amend or change the law under the guise of construction.'" 226 Ala. at 260, 146 So. at 412, quoting 59 C.J. Statutes § 564 (1932). The Legislature's expressed intent in enacting the AMLA was to limit the threat of legal actions for alleged medical malpractice, § 6-5-540, and the codified requisite burden of proof for the standard of care is mandatory and absolute (notwithstanding the Alabama Rules of Evidence, see § 6-5-548(b) and (c)). No exceptions are recognized or otherwise referred to in § 6-5-548. This Court is bound by the plain and unambiguous language of § 6-5-548, "leaving no room for construction" or presumptions. Praetorians, 226 Ala. at 260, 146 So. at 412.

Second, even if the presumption of legislative acquiescence could properly be applied to the statute at issue here, it does not justify the Court's addition of another exception to the requirements of § 6-5-548. Today, the Court specifically

removes from the reach of § 6-5-548 the factual scenario in which a patient's calls for assistance go unheeded. The Court claims that because the Legislature has not countered this Court's ambitious interpretations of § 6-5-548 in past amendments to the AMLA, it is somehow "consistent with legislative intent" to add yet another judicial exception to the statute. However, even if past judicial exceptions have been legitimized by legislative inaction, this Court has no authority to add to those exceptions. It is impossible, of course, for the Legislature to have intended, in 2000 or before, to approve an exception to the AMLA this Court creates in 2002. Such prospective approval of this Court's interpretations would create plenary power that this Court – or any court – cannot wield within the bounds of the doctrine of separation of powers. See State v. Commercial Loan Co., 251 Ala. 672, 675, 38 So. 2d 571, 573 (1949) (while this Court "may interpret the act, [it] cannot amend it").

III.

Even if I were to accept the principle that this Court has the quasi-legislative powers that it purports to wield today, the decision of this Court runs contrary to its own decisions regarding the exceptions to the AMLA. Before today's decision, the Court had proposed only four exceptions for the factual circumstances ""where want of skill or lack of care is so apparent ... as to be understood by a layman, and requires only common knowledge and experience to understand it."""[5] Anderson, 778 So. 2d at 811 (quoting Tuscaloosa Orthopedic Appliance Co. v. Wyatt, 460 So. 2d 156, 161 (Ala. 1984), quoting in turn Dimoff v. Maitre, 432 So. 2d 1225, 1226-27 (Ala. 1983)). Until overruled today, Loeb v. Cappelluzzo, 583 So. 2d 1323 (Ala. 1991), had limited the exceptions to the four enumerated above. Those exceptions did not include the present scenario – where a patient's calls for assistance go unheeded. Thus, under this Court's own decisions, the Heaths are required by § 6-5-548 to present expert testimony to prove that the defendants breached the relevant standard of care. Indeed, the admission by this

Court that a "reformulation" of its own judicially created exceptions was necessary to achieve the outcome it reaches in the majority opinion proves the point. See ___ So. 2d at ___.

IV.

By once more altering the rules of the medical- malpractice game, this Court allows the Heaths to prove medical malpractice free from the stricture of § 6-5-548. The Court's continued adherence to judicially grafted exceptions to the AMLA, and especially today's grafting of a new exception, continues this Court's alteration of the Legislature's clear requirements for bringing an action under the AMLA.

For these reasons, I must respectfully dissent.

1. Section 6-5-542(1), Ala. Code 1975, defines a "health-care provider" as a "medical practitioner, dental practitioner, medical institution, physician, dentist, hospital, or other health care provider as those terms are defined in Section 6-5-481."

2. See § 6-5-548(e) ("The purpose of this section is to establish a relative standard of care for health care providers.").

3. Indeed, this Court recognizes today, as it has before, "that the AMLA requires expert testimony in medical- malpractice cases." ___ So. 2d at ___. See, e.g., Schuffert v. Morgan, 777 So. 2d 87, 91 (Ala. 2000) ("the plaintiff must prove by expert medical testimony that the physician breached the standard of care and by the breach proximately caused the plaintiff's injury"), citing University of Alabama Health Servs. Found. v. Bush, 638 So. 2d 794 (Ala. 1994).

4. Section 6-5-540 states that the Legislature's expressed intent in enacting the AMLA was to restrict "the threat of legal actions for alleged medical injury causes."

5. The judicially recognized exceptions to § 6-5-548, before the majority issued its opinion today, were as follows:

"'1) where a foreign instrumentality is found in the plaintiff's body following surgery; 2) where the injury complained of is in no way connected to the condition for which the plaintiff sought treatment; 3) where the plaintiff employs a recognized standard or authoritative medical text or treatise to prove what is or is not proper practice; and 4) where the plaintiff is himself or herself a medical expert qualified to evaluate the doctor's allegedly negligent conduct.'" Anderson, 778 So. 2d at 811 (quoting Allred v. Shirley, 598 So. 2d 1347, 1350 (Ala. 1992), quoting in turn Holt v. Godsil, 447 So. 2d 191, 192-93 (Ala. 1984).

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Appendix P - **See App. P for full citation**
ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) as amended through 1966 - ARTICLE I. DECLARATION OF RIGHTS / Section 13.

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*ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) as amended through 1966 - ARTICLE I.* "That the great, general, and essential principles of liberty and free government may be recognized and established, we declare: *Sec. 13* "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay."— Pages 6, 7, 15,

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**Appendix Q - Evidence that was not Cumulative to the Record**

Appellant's Exhibit A attached to this Petitioner's Application of Rehearing. This explains how the case cited

by the Alabama Court of Civil Appeals is not relevant to this case and it also shows what was and was not cumulative to this case as improperly stated by the Trial Court.

Some of the evidence in the Record that was not cumulative to the Record are throughout this Petition, Statement of the Case, and in Many other places in the Record repeatedly: A brief listing of what was not cumulative to the record as incorrectly stated by the trial court in its opinion include but is not limited to: (Plaintiff's Exhibits were presented in Opposition to the Petitioner's motion of summary judgment (extensive evidence shipped under separate container and is mentioned in the trial court's order and is a part of the designated record on appeal) include but is not limited to the detailed affidavit located in the Record at C. 206 – 217.

Appendix R – The complaint in C. 5 – 31 shows by the allegations alleged in the complaint include many acts that do not require any mandatory expert witness testimony, such as fraud, undisclosed conflict of interest, deceit, etc.

Appendix O

Also, a new ruling of Law in the State of Alabama which overruled Mandatory expert witness testimony and expanded the exceptions to the expert witness rule was announced on November 27, 2002 after this case was on Appeal but before the Supreme Court denial. See *Alabama Supreme Court Case 1011582 11/27/02 Heath v. HealthSouth Medical Center, 2002).* And see Motion filed with the Alabama Supreme Court in my request to allow expert witness exceptions that applied to my case. They Alabama Supreme Court Denied my Petition with No Opinion and this also was a violation of my 14th Amendment Rights to equal protection under the Law. Also, this case is of

National Importance as Described in Volume 2, App. O. (page 22 of Petition of Cert to U.S. Supreme Court).

Appendix P

Appendix P **See App. P for full citation** ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) as amended through 1966 - ARTICLE I. DECLARATION OF RIGHTS / Section 13.